Nov 13/96
165-36 Submitted

165-36

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. ~~981~~. 447

ENOCH W. AGNEW, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED FEBRUARY 17, 1896.

(16,191.)

(16,191.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 901.

ENOCH W. AGNEW, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

INDEX.

	Original.	Print.
Caption	*a*	1
Order for juries	1	1
Drawing of grand jury	2	1
Venire	3	2
Order for special venire	5	3
Second drawing for grand jurors	6	4
Special venire	7	4
Order excusing certain grand jurors	8	5
Order for special venire for grand jurors	9	5
Third drawing for grand jury	10	5
Third special venire for grand jury	11	6
Minute entry *in re* certain grand jurors	12	6
Order for special venire for grand jurors	13	6
Fourth drawing for grand jury	14	7
Third special venire for grand jurors	15	7
Minute entry *in re* swearing grand jury	16	8
Presenting indictment	17	8
Indictment	18	8
Defendant arraigned	28	15

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 21, 1896.

	Original.	Print.
Plea in abatement	29	16
Demurrer to defendant's plea and joinder	31	17
Order sustaining demurrer and case set for trial	32	18
Trial	33	18
Verdict	37	20
Order *in re* bond for appearance	37	21
Judge's charge	38	21
Motion for new trial	50	28
Motion for new trial submitted and denied	56	32
Motion for arrest of judgment	56	32
Motion denied	56	32
Sentence	56	32
Petition for writ of error presented and allowed	56	32
Allowance of 25 days for filing bill of exceptions	56	33
Order *in re* appeal bond	56	33
Petition for writ of error and order allowing same	58	33
Assignment of errors	59	33
Judgment	66	38
Order fixing time for bill of exceptions	66	38
Appeal bond	67	38
Appearance bond	73	41
Writ of error (copy)	79	45
Citation and return (copy)	80	45
Bill of exceptions	81	46
Plea in abatement	81	46
Demurrer to plea	83	47
Joinder	83	48
Order sustaining demurrer	84	48
Objection to jury taking notes	85	49
Testimony of G. C. Stapylton	85	49
Alex. McIntyre	86	49
F. L. Williams	88	50
Alex. McIntyre (recalled)	94	54
C. D. Massey	97	56
C. J. Huber	104	60
J. K. McDonald	114	67
Charge to jury about taking notes	118	69
Testimony of J. K. McDonald (recalled)	118	69
Bennett F. Mayo	126	74
John A. Bishop	132	78
Alex. McIntyre (recalled)	158	94
J. V. Burke	165	98
Alex. McIntyre (recalled)	167	99
W. S. Bullock	171	101
Isaac Stevens	175	103
C. J. Huber (recalled)	177	104
Alex. McIntyre (recalled)	177	104
J. K. McDonald (recalled)	182	106
B. F. Mayo (recalled)	185	108
James A. Griffin	187	109
George W. Martin	198	115
J. K. McDonald (recalled)	201	116
James A. Griffin (recalled)	209	121

	Original.	Print.
Testimony of Charles M. Brown	211	122
D. P. Upson	219	126
Alex. McIntyre (recalled)	225	129
C. J. Huber (recalled)	231	133
W. B. Barnett	233	134
—— Stewart	237	136
E. W. Agnew	238	136
J. K. McDonald (recalled)	261	148
G. C. Stapylton (recalled)	262	149
J. K. McDonald (recalled)	263	149
Exhibit A—Organization certificate of the First National Bank of Ocala, Fla., February 17, 1886	264	150
C—Deposit slip of E. W. Agnew, —— —, 1895	267	152
D—Check of J. Rauers to order of First National Bank of Ocala for $3,400, April 6, 1895	268	152
E—Account of Agnew, April 16, 1895	269	153
G G—Articles of incorporation of the Globe Phosphate Mining and Mfg. Co. of Citrus Co	270	153
Description of bonds	274	156
Exhibit J—Deposit slip of E. W. Agnew, May 12, 1894	275	156
K—Deposit slip of E. W. Agnew, February 12, 1894	276	157
Defendant's Exhibit No. 1—Bond of E. W. Agnew, February 12, 1894	277	157
Exceptions to charge	278	158
Motion for new trial	284	161
Motion in arrest of judgment	291	165
Sentence	291	165
Judge's certificate to bill of exceptions	291	165
Clerk's certificate	292	165

a Transcript of record of proceedings in the circuit court of the United States, fifth circuit, southern district of Florida, in the cause of The United States of America *vs.* Enoch W. Agnew, defendant to an indictment for violation of section 5209 R. S.

1 On November 16th, 1895, an order was made as follows, to wit:

U. S. Circuit Court, Southern District of Florida.

Ordered that the clerk of said court proceed to draw, according to law, from the qualified persons of the following-named counties the following number of persons to serve as grand and petit jurors at the December term of said court at Jacksonville, viz:

From Nassau county, three (3) grand jurors and three (3) petit jurors;

From Suwannee county, four (4) grand jurors and two (2) petit jurors;

From Columbia county, three (3) grand jurors and four (4) petit jurors;

From Bradford county, two (2) grand jurors and one (1) petit juror;

From Baker county, one (1) grand juror and two (2) petit jurors;

From Alachua county, two (2) grand jurors and three (3) petit jurors;

From Putnam county, two (2) grand jurors and one (1) petit juror;

From Clay county, two (2) grand jurors and two (2) petit jurors;

From St. John's county, two (2) grand jurors and three (3) petit jurors;

From Volusia county, two (2) grand jurors and three (3) petit jurors;

and issue venires for said jurors, returnable at the U. S. court-rooms at Jacksonville, Fla., Monday, December 2d, 1895, at ten o'clock a. m.

Done in open court, at Key West, Fla., this Nov. 16th, 1895.

JAMES W. LOCKE, *Judge.*

Whereupon the deputy clerk and jury commissioner, on November 18th, 1895, draw a grand jury from the prepared jury-box as follows—*i. e.:*

2 *Grand Jurors.*

1. Geo. L. McLarty, Putnam.
2. John Douglas, Suwannee.
3. G. N. Bardin, Clay.
4. P. M. Gardner, Suwannee.
5. John Granger, Putnam.

6. James McGriffin, Nassau.
7. Arthur Simmons, Alachua.
8. T. J. Summerall, Columbia.
9. M. A. Meyers, Volusia.
10. L. C. Branning, Clay.
11. H. J. Cannon, Suwannee.
12. B. F. Upton, St. John's.
13. H. J. Platt, Suwannee.
14. Chas. Fogg, St. John's.
15. F. C. Graham, Volusia.
16. Samuel Leonard, Alachua.
17. John Hall, Bradford.
18. Ben. Morgan, Columbia.
19. Chas. H. Whitner, Nassau.
20. J. G. Alvarez, Bradford.
21. B. R. Bradley, Nassau.
22. G. G. Mattox, Columbia.
23. F. J. Pons, Baker.

Drawn in our presence November 18th, 1895.
N. A. GREENING, *D. C.*
W. B. SCOTT,
Deputy Marshal.

Witnesses:
J. D. COLE.
C. W. DA COSTA.

Endorsed: Grand jurors drawn Nov. 18th, '95. Filed Nov. 18th, '95. N. A. Greening, D. C.

And a venire is issued, which was returned endorsed as follows, viz:

3 Circuit Court of the United States, Southern District of Florida.

The President of the United States of America to James McKay, Esq., marshal of said district, Greeting:

You are hereby commanded forthwith to summon—
Geo. L. McLarty, Putnam Co.;
John Douglas, Suwannee Co.;
G. N. Bardin, Clay Co.;
P. M. Gardner, Suwannee Co.;
John Granger, Putnam Co.;
James McGriffin, Nassau Co.;
Arthur Simmons, Alachua Co.;
T. J. Summerall, Columbia Co.;
M. A. Meyers, Volusia Co.;
L. C. Branning, Clay Co.;
H. J. Cannon, Suwannee Co.;

B. F. Upton, St. John's Co.;
H. J. Platt, Suwannee Co.;
Chas. Fogg, St. John's Co.;
F. C. Graham, Volusia Co.;
Samuel Leonard, Alachua Co.;
John Hall, Bradford Co.;
Ben. Morgan, Columbia Co.;
Chas. H. Whitner, Nassau Co.;
J. G. Alvarez, Bradford Co.;
B. R. Bradley, Nassau Co.;
G. G. Mattox, Columbia Co.;
F. J. Pons, Baker Co.,

qualified jurors, to be before the circuit court of the United States at the court-rooms, in Jacksonville, Florida, at ten o'clock
4 a. m., Monday, December 2nd, A. D. 1895, to serve the court as grand jurors and not depart this court without leave.

Herein fail not, and how you shall execute this writ make known to said court by a return hereof on or before said December 2nd, 1895.

[SEAL.] Witness the Honorable Melville W. Fuller, Chief Justice of the United States Supreme Court, at Jacksonville, in said district, this 18th day of November, A. D. 1895, and of our Independence the 120th year.

N. A. GREENING,
Deputy Clerk.

Endorsed: U. S. circuit court, south. dist. of Florida, December term, 1895. Venire for grand jury. Received this venire at Jacksonville Nov. 18, 1895, and executed it by mailing and receiving notice of their acceptance of the following-named parties: G. N. Bardin, John Hall, Samuel Leonard, H. J. Cannon, John Granger, J. G. Alvarez, P. M. Gardner, Arthur Simmons, T. J. Summerall, Ben. Morgan, L. C. Branning, F. C. Graham, B. F. Upton, F. J. Pons, H. J. Platt, G. C. Mattox, John Douglas, Chas. H. Whitner; and the following-named parties could not be found: Geo. L. McLarty, James McGriffin, M. A. Meyers, Chas. Fogg, J. C. Alvarez, B. R. Bradley. James McKay, U. S. marshal. Dec. 2d, 1895. Filed Dec. 2, 1895. E. O. Locke, clerk.

And the panel of grand jurors being incomplete from absence and excuses, it is ordered as follows, to wit:

5 U. S. Circuit Court, So. Dist. of Florida, December Term, 1895.

Ordered that the clerk proceed to draw, according to law, from the names placed in the jury-box, the names of ten qualified jurors from Duval county to complete the panel of grand jurors, and issue a venire to summon the same to be before this court at three o'clock p. m. this 2d day of Dec., 1895.

December 2d, 1895.

JAMES W. LOCKE, *Judge.*

Endorsed: Dec. term, '95. Order for special venire g'd jurors. Filed Dec. 2d, 1895. E. O. Locke, clerk.

Whereupon ten names of jurors from Duval county are drawn from the prepared box as follows, viz:

6 *Drawing of Special Grand Jurors Dec. 2d, 1895.*

Wm. R. Carter.
John E. Onley.
Z. T. Anderson.
Chas. E. Bell.
James W. Lane.
Geo. Emery.
W. G. Candlish.
John H. Brown.
A. R. Paxon.
W. W. Wallace.

Drawn in presence of—
D. EAGAN.
A. FISHER.

JAMES McKAY,
U. S. Marshal,
By E. O. LOCKE, *Clerk.*

Endorsed: 2d drawing g'd jurors, Dec. term, 1895. Filed Dec. 2, 1895. E. O. Locke, clerk.

And a special venire was issued, which, with the return, is as follows, viz:

7 Circuit Court of the United States, Southern District of Florida.

The President of the United States of America to James McKay, Esq., marshal of said district, Greeting:

You are hereby commanded forthwith to summon Wm. R. Carter, Jno. E. Onley, Z. T. Anderson, Chas. E. Bell, James W. Lane, Geo. Emery, W. G. Candlish, John H. Brown, A. R. Paxon, and W. W. Wallace, qualified jurors, to be before the circuit court of the United States, at the court-rooms, at Jacksonville, Florida, to serve the court as grand jurors, and not depart from the court without leave. Returnable at 3 p. m., Dec. 2d, 1895.

Herein fail not, and how you shall execute this writ make known to said court by a return hereof. Writ returnable 3 p. m., Dec. 2d, 1895.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Jacksonville, in [SEAL.] said district, this 2d day of December, 1895.

E. O. LOCKE, *Clerk.*

Endorsed: Special venire grand jurors, Dec. term, 1895. Received this special venire at Jacksonville, Fla., Dec. 2d, 1895, and executed it by serving notice on the following-named parties at Jacksonville, Fla., Dec. 2d, 1895: Wm. R. Carter, John E. Onley, Z. T. Anderson, Chas. E. Bell, James W. Lane, Geo. Emery, W. G. Candlish, John H. Brown, A. R. Paxton. The following-named parties could not be found: —— ——. James McKay, U. S. marshal, by W. B. Scott, deputy. Filed Dec. 2, '95. E. O. Locke, clerk.

8 Stated Term, Dec'r 2nd, 1895, Monday.

Present: Hon. James W. Locke, district judge.
Ordered that court be opened.
And court is opened by due proclamation.

* * * * * * *

The special venire for grand jurors being returned, there answer to their names W. R. Carter, Jno. E. Onley, Z. T. Anderson, Chas. E. Bell, Jas. W. Lane, Geo. Emery, W. G. Candlish, John H. Brown, and A. R. Paxon.

And, on excuse rendered, ordered that W. R. Carter, Jas. W. Lane, and Geo. Emery be excused.

Ordered that 4 names be drawn for jurors to complete the panel of grand jurors, returnable at 10 a. m., 3d inst.; which order is as follows, viz:

* * * * * * *

9 U. S. Circuit Court, So. Dist. of Florida, December Term, 1895.

Ordered that the clerk proceed to draw, according to law, from the names placed in the jury-box, the names of four qualified jurors from Duval county to complete the panel of grand jurors, and issue a venire to summon the same to be before this court at 10 a. m., Dec. 3d, 1895.

December 2d, 1895. JAMES W. LOCKE, *Judge.*

Endorsed: Dec. term, 1895. Order for special venire for grand jurors. Filed Dec. 2d, 1895. E. O. Locke, clerk.

And the names of four jurors from Duval county are drawn from the box, viz:

10 *3d Drawing of Grand Jurors.*

A. K. Leon.
Alex. Sabel.
Julius Kaufman.
Frank I. Robinson.

Drawn in presence of—
CROMWELL GIBBONS.
JOHN T. WALKER.

JAMES McKAY,
U. S. Marshal,
By E. O. LOCKE, *Clerk.*

Dec. 2d, 1895.

Endorsed: 3d drawing grand jury. Filed Dec. 2, 1895. E. O. Locke, clerk.

And a special venire is issued, which, with the return thereon, is as follows:

11 Circuit Court of the United States, Southern District of Florida.

The President of the United States of America to James McKay, Esq., marshal of said district, Greeting:

You are hereby commanded forthwith to summon A. K. Leon, Alex. Sabel, Julius Kauffman, and Frank I. Robinson, qualified jurors, to be before the circuit court of the United States at the court-rooms at Jacksonville, Florida, to serve the court as grand jurors, and not depart from the court without leave.

Herein fail not, and how you shall execute this writ make known to said court by a return hereof; writ returnable Dec. 3d, 1895, at 10 a m.

Witness the Honorable Melville W. Fuller, Chief Justice [SEAL.] of the Supreme Court of the United States, at Jacksonville, in said district, this 2d day of December, 1895.

E. O. LOCKE, *Clerk.*

Endorsed: 2d special venire, grand jury. Received this 2d special venire at Jacksonville, Fla., December 2d, 1895, and executed it by notifying the following-named parties at Jacksonville, Fla., December 2d, 1895: A. K. Leon, Julius Kaufman. The following-named parties could not be found: Alex. Sabel, Frank I. Robinson. James McKay, U. S. marshal, by W. B. Scott, deputy. Filed Dec. 2, '95. E. O. Locke, clerk.

12 Stated Term, Dec'r 2nd, 1895, Monday.

Present: Hon. James W. Locke, district judge.

Ordered that court be opened.

And court is opened by due proclamation.

* * * * * * *

And the venire being returned showing A. K. Leon and Julius Kaufman summoned, and Alex. Sabel and Frank I. Robinson "not found."

Whereupon an order was made as follows, viz:

13 U. S. Circuit Court, So. Dist. of Florida, December Term, 1895.

Ordered that the clerk proceed to draw, according to law, from the names placed in the jury-box, the names of four qualified jurors from Duval county to complete the panel of grand jurors, and issue a venire to summon the same to be before this court at ten a. m. Dec. 3d, 1895.

December 2d, 1895.

JAMES W. LOCKE, *Judge.*

Endorsed: Dec. term, '95. Order for special venire for grand jurors. Filed Dec. 2d, 1895. E. O. Locke, clerk.

And from names of jurors from Duval county are drawn as follows:

14 *Grand Jurors Drawn Dec. 2d, 1895.*

Dennis A. Andreu.
Benj. F. Manier.
John L. Marvin.
Sam'l Morris.

Drawn in presence of—
D. EAGAN.
G. A. M. RAINS.

JAMES McKAY,
U. S. Marshal,
By E. O. LOCKE, *Clerk.*

Endorsed: 4th drawing grand jurors. Filed Dec. 2, '95. E. O. Locke, clerk.

And a special venire is issued to the marshal, which, with the return thereon, is as follows, viz:

15 United States Circuit Court, Southern District of Florida.

The President of the United States to the marshal of the United States for the southern district of Florida or any of his deputies:

You are hereby commanded to summon Dennis A. Andreu, Benj. F. Manier, John L. Marvin, and Sam'l Morris to be before the United States court, at the court-rooms, in Jacksonville, Fla., to serve as grand jurors, on Dec. 3d, 1895, at 10 a. m.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Jacksonville, in [SEAL.] said district, this second day of Dec., A. D. 1895.

E. O. LOCKE, *Clerk.*

Endorsed: 3d special venire for grand jurors, Dec. term, 1895. Received the within special venire Dec. 2nd and executed same by notifying the following: Dennis A. Andreu, B. F. Manier, Dec. 2nd, and John L. Marvin, Dec. 3rd, 1895. James McKay, U. S. marshal, by W. B. Scott, dep'ty. Filed Dec. 3d, 1895. E. O. Locke, clerk.

16 TUESDAY, *Dec'r 3rd,* 1895.

Present: Hon. J. W. Locke, district judge.
Ordered that court be opened.
And court is opened by due proclamation.

* * * * * * *

The grand jury being complete, it is ordered that John L. Marvin be, and he is hereby, appointed foreman.

And the following are sworn and charged as a grand jury, viz:

John L. Marvin,		John Hall,
H. J. Cannon,		John A. Granger,
Morgan P. Gardner,		Arthur Simmons,
T. J. Summerall,		Ben. Morgan,
F. C Graham,		G. C. Mattox,
John Douglass,		C. H. Whitner,
John E. Onley,		Z. T. Anderson,
Charles E. Bell,		W. G. Candlish,
A. R. Paxon,	and	Denis A. Andreu.

And the grand jury retire.

* * * * * * *

17 THURSDAY, *Dec.* 12, 1895.

Present: Hon. James W. Locke, district judge.

Ordered that court be opened.

And the court is opened by due proclamation.

* * * * * * *

And now comes the grand jury and presents the following indictments, viz:

* * * * * * *

THE UNITED STATES *vs.* ENOCH W. AGNEW. } # 281. Violation Section 5209, R. S.

"A true bill."

JNO. L. MARVIN, *Foreman.*

And grand jury again retire.

* * * * * * *

18 Which indictment is as follows, viz:

In the Circuit Court of the United States for the Southern District of Florida, in the Fifth Judicial Circuit.

At a regular term of the circuit court of the United States for the southern district of Florida, in the fifth circuit, begun and held at the city of Jacksonville, within and for the district aforesaid, on the second day of December, in the year of our Lord one thousand eight hundred and ninety-five.

SOUTHERN DISTRICT OF FLORIDA, *ss:*

The grand jurors of the United States of America, empanelled and sworn within and for the district aforesaid, on their oath present that one Enoch W. Agnew heretofore, to wit, on the fifteenth day of April, in the year of our Lord one thousand eight hundred and ninety-five, in the county of Marion, State of Florida, within the district aforesaid and within the jurisdiction of this court, the said Enoch W. Agnew being then and there the president of a certain national banking association then and there known and designated as the First National Bank of Ocala, in the State of Florida,

which said association had been theretofore created and organized under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Ocala, State of Florida, did then and there unlawfully and willfully misapply the moneys, funds, and credits of the said association with intent to convert the same to his own use and with intent to injure and defraud the said association, in this, to wit: That the said Enoch W. Agnew, president as aforesaid, well knowing that his personal account with the said association, as shown by the books thereof, was largely overdrawn and that he was largely indebted to the said association, caused and procured a certain check, which was then and there the property of and belonging to the said association and was of the value of three thousand and four hundred dollars, to be entered as a credit on the personal account of him, the said Enoch W. Agnew, on the books of the
19 said association and thereby made subject to the disposal of him, the said Enoch W. Agnew, and which said check was in the figures and words as follows, to wit:

"No. 276. SAVANNAH, GA., *April 6th*, 1895.

Merchants' National Bank of Savannah,

United States depository,

Pay to the order of the First National Bank of Ocala $3,400, thirty-four hundred dollars, payment in full for 1,700 charges of the Marion Phosphate Co.'s stock.

J. ROUERS."

the willful misapplication of the moneys, funds, and credits of the said association by him for the use and benefit and with the intent aforesaid by him, the said Enoch W. Agnew as aforesaid, being then and there contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Second County.

And the grand jurors aforesaid upon their oath aforesaid do further present that one Enoch W. Agnew heretofore, to wit, on the fifteenth day of April, in the year of our Lord one thousand eight hundred and ninety-five, in the county of Marion, State of Florida, within the district aforesaid and within the jurisdiction of this court, the said Enoch W. Agnew being then and there the president of a certain national banking association then and there known and designated as the First National Bank of Ocala, in the State of Florida, which said association had been theretofore created and organized under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Ocala, State of Florida, did then and there unlawfully and knowingly make and cause to be made a certain deposit slip in words and figures as follows, to wit:

20 "Deposited in the First National Bank of Ocala, Fla., by E. W. Agnew 4, 1895.

Please list each check separately.

	Dollars.	Cents.
Bank notes.....		
Gold.....		
Silver.....		
Checks.....		
Sav. checks.....	3,400	00
"	5,950	00
"	9,350	00"

by means whereof he, the said Enoch W. Agnew, then and there unlawfully and knowingly did make and cause to be made in a certain book then and there belonging to and in use by the said association in the transaction of its said banking business and then and there designated and known as follows, to wit, "Individual Ledger Number 18, from A to L, inclusive," a certain entry, of the date of April fifteenth, 1895, to the credit of the personal account of him, the said Enoch W. Agnew, in the said book contained, whereby it was in substance and effect indicated and declared that he, the said Enoch W. Agnew, had then and there on the day last mentioned deposited to the credit of his said personal account with the aforesaid banking association the sum of nine thousand three hundred and fifty dollars, and that the aforesaid sum of nine thousand three hundred and fifty dollars had been on the day aforesaid duly received by the said banking association by deposit from him, the said Enoch W. Agnew; which said entry so made as aforesaid was then and there false, in this, that the said Enoch W. Agnew did not on the day last aforesaid deposit to the credit of his account with
21 the said banking association the aforesaid sum of nine thousand three hundred and fifty dollars, and the said banking association did not on the day last aforesaid receive from him, the said Enoch W. Agnew, the aforesaid sum of nine thousand three hundred and fifty dollars, as he, the said Enoch W. Agnew, well knew, and which said false entry so made as aforesaid on the deposit slip aforesaid and in the book aforesaid was then and there made with the intent on the part of him, the said Enoch W. Agnew, *in* injure and defraud the said association, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Third Count.

And the grand jurors aforesaid upon their oath aforesaid do further present that one Enoch W. Agnew heretofore, to wit, on the twelfth day of January, in the year of our Lord one thousand eight hundred and ninety-four, in the county of Marion, State of Florida, within the district aforesaid and within the jurisdiction of this court, the said Enoch W. Agnew being then and there the president

of a certain national banking association then and there known and designated as the First National Bank of Ocala, in the State of Florida, which said association had been theretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Ocala, State of Florida, did, by virtue of his said office and while he was employed therein, have, receive, and take into his possession divers notes of the national bank currency of the said United States, divers United States notes, Treasury notes, legal-tender notes, and silver certificates of the paper currency emitted by the said United States, divers gold coins and silver coins of the coinage of the said United States, divers bills of exchange for the payment of money, divers checks for the payment of money, divers certificates of the deposit of money, called certificates of deposit, and divers promissory notes for the payment of money,
22 the respective kinds and value of each being to the grand jurors unknown, but the aggregate being to the amount and of the value of twenty-five hundred dollars, of the property, moneys, funds, and credits of the same banking association then and there being, and the said Enoch W. Agnew the same national bank notes, notes of the paper currency emitted by the said United States, gold coins, silver coins, bills of exchange, checks, certificates of deposit, and promissory notes then and there unlawfully and feloniously did embezzle and convert to his own use with intent then and there to injure and defraud the said association, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Fourth Count.

And the grand jurors aforesaid upon their oath aforesaid do further present that one Enoch W. Agnew heretofore, to wit, on the twelfth day of January, in the year of our Lord one thousand eight hundred and ninety-four, in the county of Marion, State of Florida, within the district aforesaid and within the jurisdiction of this court, the said Enoch W. Agnew being then and there the president of a certain national banking association then and there known and designated as the First National Bank of Ocala, in the State of Florida, which said association had been theretofore created and organized under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Ocala, State of Florida, did then and there unlawfully and willfully misapply the moneys, funds, and credits of the said association with intent to convert the same to his own use and with intent to injure and defraud the said association, in this, to wit, that the said Enoch W. Agnew, president as aforesaid, at the time and place aforesaid, and acting ostensibly for said association, purchased and obtained from one John A. Bishop, as president of the Globe Phosphate Mining and Manufacturing Company, a corporation under the laws of Florida, certain of the bonds of said phosphate company of the par value of five thousand dollars, being

five bonds issued by said phosphate company and numbered
23 from one to five, both inclusive, paying therefor only the sum of twenty-five hundred dollars, and that he, the said Enoch W. Agnew, thereupon, without the knowledge and consent of the said banking association, did then and there place the said five thousand dollars of the bonds of the said Globe Phosphate Company among and as part of the credits and assets of the said banking association, and did thereupon credit and cause to be credited to the personal account of him, the said Enoch W. Agnew, on the books of the said banking association the said sum of five thousand dollars, he, the said Enoch W. Agnew, then and there well knowing that the aforesaid bonds of the said phosphate company were entirely worthless and of no commercial value; and so the grand jurors aforesaid upon their oath aforesaid do say that he, the said Enoch W. Agnew, president as aforesaid, in the manner and form and by the means and for the use and benefit and with the intent and without the knowledge and consent aforesaid, did then and there willfully misapply — the moneys, funds, and credits of the said banking association the sum of twenty-five hundred dollars and convert the same to his own use, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Fifth Count.

And the grand jurors aforesaid upon their oath aforesaid do further present that one Enoch W. Agnew heretofore, to wit, on the twelfth day of February, in the year of our Lord one thousand eight hundred and ninety-four, in the county of Marion, State of Florida, within the district aforesaid and within the jurisdiction of this court, the said Enoch W. Agnew being then and there the president of a certain national banking association then and there known and designated as the First National Bank of Ocala, in the State of Florida, which said association had been theretofore created and organized under the laws of the United States of America, and which said association was then and there carrying on a banking
business in the city of Ocala, State of Florida, did, by virtue
24 of his said office and while he was employed therein, have, receive, and take into his possession divers notes of the national bank currency of the said United States, divers United States notes, Treasury notes, legal-tender notes, and silver certificates of the paper currency emitted by the said United States, divers gold coins and silver coins of the coinage of the United States, divers bills of exchange for the payment of money, divers checks for the payment of money, divers certificates of the deposit of money, called certificates of deposit, and divers promissory notes for the payment of money, the respective kinds and values of each being to the grand jurors unknown, but the aggregate being to the amount and of the value of seven thousand five hundred dollars, of the property, moneys, funds, and credits of the same banking association then and there being, and the said Enoch W. Agnew the same

national bank notes, notes of the paper currency emitted by the said United States, gold coins, silver coins, bills of exchange, checks, certificates of deposit, and promissory notes then and there unlawfully and feloniously did embezzle and convert to his own use with intent then and there to injure and defraud the said association, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Sixth Count.

And the grand jurors aforesaid upon their oath aforesaid do further present that one Enoch W. Agnew heretofore, to wit, on the twelfth day of February, in the year of our Lord one thousand eight hundred and ninety-four, in the county of Marion, State of Florida, within the district aforesaid and within the jurisdiction of this court, the said Enoch W. Agnew being then and there the president of a certain national banking association then and there known and designated as the First National Bank of Ocala, in the State of Florida, which said association had been theretofore created and organized under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Ocala, State of Florida, did then and
25 there unlawfully and willfully misapply the moneys, funds, and credits of the said association with intent to convert the same to his own use and with intent to injure and defraud the said corporation, in this, to wit, that the said Enoch W. Agnew, president as aforesaid and acting ostensibly for said association, at the time and place aforesaid, purchased and obtained from one John A. Bishop, as president of the Globe Phosphate Mining and Manufacturing Company, a corporation under the laws of Florida, certain of the bonds of said phosphate company of the par value of ten thousand dollars, paying therefor only the sum of twenty-five hundred dollars, and that he, the said Enoch W. Agnew, thereupon, without the knowledge and consent of the said banking association, did then and there place the said ten thousand dollars of the bonds of the said Globe Phosphate Company among and as parts of the credits and assets of the said banking association, and did thereupon credit and cause to be credited to the personal account of him, the said Enoch W. Agnew, on the books of the said banking association the said sum of ten thousand dollars, he, the said Enoch W. Agnew, then and there well knowing that the aforesaid bonds of the said phosphate company were entirely worthless and of no commercial value; and so the grand jurors aforesaid upon their oath aforesaid do say that he, the said Enoch W. Agnew, president as aforesaid, in the manner and form and by the means and for the use and benefit and with the intent, without knowledge and consent aforesaid, did then and there willfully misapply of the moneys, funds, and credits of the said banking association the sum of seven thousand and five hundred dollars and convert the same to his own use, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Seventh Count.

And the grand jurors aforesaid upon their oath aforesaid do further present that one Enoch W. Agnew heretofore, to wit, on the twelfth day of May, in the year of our Lord one thousand eight hundred and ninety-four, in the county of Marion, State of
26 Florida, within the district aforesaid and within the jurisdiction of this court, the said Enoch W. Agnew being then and there the president of a certain national banking association then and there known and designated as the First National Bank of Ocala, in the State of Florida, which said association had theretofore been created and organized under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Ocala, State of Florida, did, by virtue of his said office and while he was employed therein, have, receive, and take into his possession divers notes of the national currency of the said United States, Treasury notes, legal-tender notes, and silver certificates of the paper currency emitted by the said United States, divers gold coins and silver coins of the coinage of the United States, divers bills of exchange for the payment of money, divers checks for the payment of money, divers certificates of the deposit of money, called certificates of deposit, and divers promissory notes for the payment of money, the respective kinds and value of each being to the grand jurors unknown, but the aggregate being to the amount of the value of seven thousand and five hundred dollars, of the property, money, funds, and credits of the same banking association then and there being, and the said Enoch W. Agnew the same national bank notes, notes of the paper currency emitted by the said United States, gold coins, silver coins, bills of exchange, checks, certificates of deposit, and promissory notes then and there unlawfully and feloniously did embezzle and convert to his own use with intent then and there to injure and defraud the said association, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Eighth Count.

And the grand jurors aforesaid upon their oath aforesaid do further present that one Enoch W. Agnew heretofore, to wit, on the twelfth day of May, in the year of our Lord one thousand
27 eight hundred and ninety-four, in the county of Marion, State of Florida, within the district aforesaid and within the jurisdiction of this court, the said Enoch W. Agnew being then and there the president of a certain national banking association then and there known and designated as the First National Bank of Ocala, in the State of Florida, which said association had been theretofore created and organized under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Ocala, State of Florida, did then and there unlawfully and willfully misapply the moneys, funds, and credits of the said association with intent to

convert the same to his own use, with intent to injure and defraud the said association, in this, to wit, that the said Enoch W. Agnew, president as aforesaid, at the time and place aforesaid, purchased and obtained from one John A. Bishop, president of the Globe Phosphate Mining and Manufacturing Company, a corporation, certain of the bonds of said phosphate company of the par value of ten thousand dollars, paying therefor only the sum of twenty-five hundred dollars, and that the said Enoch W. Agnew thereupon and without the knowledge and consent of the said banking association did then and there place the ten thousand dollars of the bonds of the Globe Phosphate Mining and Manufacturing Company among and as part of the credits and assets of the said banking association, and did thereupon credit and cause to be credited to the personal account of him, the said Enoch W. Agnew, on the books of the said banking association the said sum of ten thousand dollars, and the said Enoch W. Agnew then and there well knowing that the aforesaid bonds of the said phosphate company were entirely worthless and of no commercial value; and so the grand jurors aforesaid upon their oath aforesaid do say that he, the said Enoch W. Agnew, president as aforesaid, in the manner and form and by the means and for the use and benefit and with the intent and without the knowledge and consent aforesaid, did then and there willfully misapply of the moneys, funds, and credits of the said banking association the sum of seven thousand and five
28 hundred dollars and convert the same to his own use, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

H. H. BUCKMAN,
Ass't United States Att'y.

Endorsed: #281. United States circuit court, southern district of Florida. The United States *vs.* Enoch W. Agnew. Indictment for violation of sec. 5209, R. S. A true bill. Jno. L. Marvin, foreman. Witnesses: J. K. McDonald, F. S. Williams, C. D. Massey, G. W. Martin, Jno. A. Bishop, Alex. McIntyre, C. J. Huber, B. F. Mayo. Filed Dec. 12, 1895. E. O. Locke, clerk. H. H. Buckman, ass't U. S. attorney.

* * * * * * *

TUESDAY, *Dec'r 17th*, 1895.

Present: Hon. Jas. W. Locke, district judge.
Ordered that court be opened.
And court is opened by due proclamation.

* * * * * * *

THE UNITED STATES *vs.* ENOCH W. AGNEW. } #281. Sec. 5209.

Defendant, being present with counsel, is arraigned. Whereupon defendant files a plea in abatement, viz:

29 In the Circuit Court for the Southern District of Florida, Fifth Judicial Circuit.

UNITED STATES *vs.* ENOCH W. AGNEW. } Indictment for Violation of Section 5209, R. S.

And the said Enoch W. Agnew in his own proper person comes into court here and, having heard the said indictment read, says that the grand jury which found said indictment was an illegal grand jury, in this, that after sixteen had failed to attend upon the regular venire the court ordered that a special venire issue for ten grand jurors to be drawn according to law; said grand jurors so ordered by the court were directed to be taken from the county of Duval; that the clerk and marshal in drawing said venire, whenever a name was legally drawn from the box, if said party so drawn was not from the county of Duval, laid aside said name and continued drawing until ten names from the county of Duval were obtained, and which illegal drawing of said venire tended to the prejudice of this defendant, and the court, on excusing three returned on the second venire, ordered that four names be drawn for jurors to complete the panel; that said jurors were ordered to be drawn from the box, and the clerk and marshal drawing the same were ordered to take those that were from Duval county as they came from the box, and the said clerk and marshal, as the names were drawn, rejected and did not place on the venire said names so drawn, but rejected and laid them aside until names came out of the box of parties resident of Duval county, which drawing was illegal and tended to the prejudice of the defendant; and, upon said venire being returned showing A. K. Leon and Julius Kaufman summoned and Alex. Sabel and Frank Robinson not found, the court ordered that four names be drawn from the box and in said

30 order directed that said four names should be taken from the county of Duval; that the said U. S. marshal and clerk, in obedience to said order, drew from the box more than four names, and where the names were of persons not resident of Duval county rejected and laid them aside and continued drawing until Dennis A. Andreu, Benjamin F. Manier, John L. Marvin, and Samuel Morris were drawn, and so John L. Marvin, John E. Onley, Z. L. Anderson, Charles E. Bell, W. G. Candlish, A. R. Paxon, and Dennis A. Andreu were drawn illegally by said marshal and clerk and not in accordance with the statute of the United States in such case made and provided, which requires that where less than sixteen attend the court shall order the marshal to summon from the body of the district, and not from the bystanders, a sufficient number of persons to complete the grand jury. And so the names of many persons who were duly drawn from the jury-box were not placed upon the venire, but were, in the pursuance of the aforesaid orders, after being drawn from the box, rejected and laid aside by the clerk and marshal drawing the same for the purpose of completing the grand jury from the residents of the county of Duval; and the defendant

says that he was entitled to have the said grand jury completed according to law; and the said grand jury so empanelled and sworn as aforesaid was not drawn and empaneled in accordance with the statutes of the U. S. providing for the drawing and empaneling of grand juries, but was illegal; and this defendant says that such drawing tended to his injury and prejudice.

Wherefore he prays judgment of the said indictment, and that the same may be quashed.

ENOCH W. AGNEW.

Sworn to and subscribed before me Dec'r 17th, 1895.
E. O. LOCKE, *Clerk.*

Endorsed: U. S. *vs.* Enoch W. Agnew. Plea in abatement to # 281. Filed Dec. 17th, 1895. E. O. Locke, clerk.

To which a demurrer is filed, viz:

31 In the Circuit Court of the United States for the Southern District of Florida, in the Fifth Judicial Circuit.

UNITED STATES *vs.* ENOCH W. AGNEW. } Indictment for Violation of Section 5209, R. S.

And Frank Clark, United States attorney for the southern district of Florida, who prosecutes in behalf of the said United States, as to the said plea of the said Enoch W. Agnew by him pleaded herein, and filed on the seventeenth day of December, A. D. 1895, says that the same and the matters therein contained, in manner and form as the same are therein pleaded and set forth, are not sufficient in law to bar or preclude the United States from prosecuting the said indictment against the said Enoch W. Agnew, and that the said United States are not bound by the law of the land to answer the same; and this the said Frank Clark, who prosecutes as aforesaid, is ready to verify. Wherefore, for want of sufficient plea in this behalf, the said Frank Clark, for the United States, prays judgment, and that the said Enoch W. Agnew may be convicted of the premises in the said indictment specified.

FRANK CLERK,
U. S. Attorney.

Now comes the defendant, E. W. Agnew, by E. K. Foster & Gunby & Gibbons, his att'ys, — joins issue on said demurrer.
Dec. 17th, '95.

E. K. FOSTER.
GUNBY & GIBBONS.

Endorsed: # 281. In circuit court United States, so. dist. Fla. United States *vs.* Enoch W. Agnew. Indictment, violation sec. 5209, R. S. Demurrer to defendant's plea and joinder. Filed Dec. 17th, 1895. E. O. Locke, clerk.

32 TUESDAY, *Dec'r 17th*, 1895.

Present: Hon. Jas. W. Locke, district judge.
Ordered that court be opened.
And court is opened by due proclamation.

* * * * * * *

UNITED STATES
vs. } # 281. Sec. 5209.
ENOCH W. AGNEW.

Demurrer to plea in abatement is argued, defendant being present; whereupon it is ordered that the demurrer to the defendant's plea in abatement be sustained; to which order and ruling of the court defendant then and there, by his counsel, excepts; and thereupon defendant, being called upon to plead to said indictment, pleads "not guilty."

Ordered that this case be set for trial for January 3rd, 1896.

* * * * * * *

33 FRIDAY, *January 3rd*, 1896.

Present: Hon. James W. Locke, district judge.
Ordered that court be opened.
And court is opened by due proclamation.

* * * * * * *

U. S.
vs. } # 281. Viol. Sec. 5209, R. S.
ENOCH W. AGNEW.

Defendant being present with counsel, it is ordered that this issue proceed to trial.

And a jury is called, sworn on their *voir dire*, and examined by the prosecution and defense touching their elegibility, and H. H. Emmons, R. M. Witt, Faucet Marine, W. T. Jones, C. M. Wimberly, W. D. De Cottes, and T. J. Boyd are stood aside by the defendant; D. L. Bryan, Emanuel Fortune, and Alex. De Lyon are stood aside by the U. S. attorney, and M. Hearn and W. A. McCann are stood aside for cause; and, the panel being exhausted, ordered that the marshal summon one talesman to complete the jury.

And Geo. S. Ferry is summoned, examined as to his competency, and sworn on his *voir dire* as to his elegibility in this cause.

And a jury is sworn to try this issue, viz:

J. J. Sikes.	Jacob Burkheim.
Geo. A. Latham.	Jno. Kennedy.
J. M. De Wall.	L. H. Mattair.
W. A. MacDuff.	J. L. Liggon.
S. A. Winter.	A. C. Robert.
Max Hirschman.	Geo. S. Ferry.

* * * * * * *

U. S.
vs.
ENOCH W. AGNEW. } # 281. Sec. 5209, R. S.

The jury, defendant, and counsel being present, the trial of this issue is proceeded with (the witnesses for the trial for the
34 prosecution being first put under the rule of exclusion) by the introduction of documentary evidence and the testimony of G. C. Stapylton, Alex. McIntyre, F. L. Williams, C. D. Massey, C. J. Huber, and J. K. McDonald, who are duly sworn.

Ordered that court adjourn till tomorrow at 10 a. m.

And court adjourns as ordered.

35 SATURDAY, *January 4th*, 1896.

Present: Hon. Jas. W. Locke, district judge.

Ordered that court open.

And court is opened by due proclamation.

* * * * * * *

THE UNITED STATES
vs.
ENOCH W. AGNEW. } # 281. Viol. Sec. 5209, R. S.

The defendant being present with counsel and the jury all present, the trial of this issue is continued by the testimony of J. K. McDonald, Bennet F. Mayo, John A. Bishop, Alex. McIntyre, witnesses duly sworn, and documentary evidence presented.

And recess is taken til- 2.30 p. m.

And court again convening—

* * * * * * *

THE UNITED STATES
vs.
ENOCH W. AGNEW. } # 281. Viol. Sec. 5209, R. S.

The jury being present and defendant being present with counsel, the trial of this issue is continued by the testimony of J. V. Burke, Alex. McIntyre, W. S. Bullock, Isaac Stevens, C. J. Huber, Alex. McIntyre recalled, J. K. McDonald, and B. F. Mayo, duly sworn, and documenta are introduced in evidence.

Ordered that court adjourn till 10 a. m. on the 6th.

And court adjourns as ordered.

36 MONDAY, *January 6th*, 1896.

Present: Hon. Jas. W. Locke, district judge.

Ordered that court be opened.

And court is opened by due proclamation.

THE UNITED STATES
vs.
ENOCH W. AGNEW. } # 281. Viol. Sec. 5209, R. S.

The jury being present and the defendant being in court with counsel, the trial of this issue is continued by the introduction of documentary evidence and the testimony of witnesses duly sworn, viz., Jas. A. Griffin, G. W. Martin, J. K. McDonald, J. A. Griffin recalled, and prosecution rests.

And being called by the defendant and duly sworn, there testifies C. M. Brown.

And recess taken till 2.30 p. m.

And court again convening—

And the jury being present and the defendant being in court with counsel, the trial of this issue is continued by the testimony for the defence of D. B. Upson, Alex. McIntyre, C. J. Huber, W. B. Barnett, G. A. Stewart, and Enoch W. Agnew, who are duly sworn; and defendant resting, there testify for the prosecution J. K. McDonald, G. C. Stapylton, and J. K. McDonald recalled; and the testimony being concluded, the jury is addressed for the prosecution by Frank Clark, Esq., U. S. attorney.

Ordered that court adjourn till 10 a. m. tomorrow.

And court adjourns as ordered.

37 TUESDAY, *January 7th*, 1896.

Present: Hon. James W. Locke, judge.

Ordered that court be opened.

And court is opened by due proclamation.

* * * * * * *

UNITED STATES
vs.
ENOCH W. AGNEW. } # 281. Viol. Sec. 5209, R. S.

The jury being present and defendant being in court with counsel, the trial of this issue is resumed, and the jury are addressed by E. K. Foster, Esq., and E. R. Gunby, Esq., for the defendant, and the U. S. attorney, for the prosecution, and are charged by the court and retire with a sworn bailiff.

And recess is taken till 3 p. m.

And, court again convening—

Now comes the jury and, having answered to their names—the defendant being present, with counsel—return their verdict, to wit—*i. e.:*

We, the jury, find the defendant "guilty."

L. H. MATTAIR, *Foreman.*

And counsel for defendant, defendant being present, gives notice that he will move to set the verdict aside, and for a new trial, and

hearing of said motion is set for January 9th, at 10 a. m., 1896; and it is ordered that defendant remain under the same bond for his appearance now on file.

* * * * * * *

And the charges given to the jury before retiring are as follows:

38 *Judge's Charge.*

GENTLEMEN OF THE JURY: This defendant stands charged with the commission of several acts which are violations of the laws of the United States for the protection of the integrity of the national banking association-.

It has been charged that he, while president of the First National Bank of Ocala, was guilty of certain acts and transactions which constitute crimes under section 5209. Eliminating from the language of that section everything which would not be relevant and material in this case, the section stands: "Every president of any association (meaning a national banking association) who embezzles, abstracts, or willfully misapplies any of the moneys, funds, or credits of the association, or who makes any false entry in any book with intent to injure or defraud the association, shall be deemed guilty of a misdemeanor."

That is the language of the law applying to this case. Under this statute the defendant has been charged in eight counts in the indictment.

First he is charged with having, upon April 15th, 1895, caused a check of the amount of $3,400, the property of the Bank of Ocala, to be placed to his personal credit, well knowing that his personal account was overdrawn, thereby misapplying the amount of $3,400. That is the first count.

The second count is based upon the same transaction and alleges that he caused a false entry to be made, charging that he caused a certain deposit slip to be made by which this $3,400 was placed to his personal credit and account, which deposit slip was false and the entry of which was false and made with intent to defraud.

You will see those two counts are based upon one transaction. One charges him with misapplying and putting to his own use the credit of $3,400; the other charges him with having caused a false entry to be made in the books.

39 The third count charges that upon the 12th of January, 1894, he did take into his possession and fraudulently embezzle and convert to his own use property consisting of different forms of money (they are all recited at length in the indictment, but in this charge would only embarrass you to go through a repetition of them; it charges there all the different forms of money that he converted to his own use) to the amount of $2,500.

The fourth count explains more particularly how that $2,500 was converted to his own use, by charging that he did willfully and unlawfully misapply the moneys and credits of the bank with intent to injure and defraud it, by purchasing for said bank bonds of the Globe Phosphate Co. of the par value of $5,000 and paying therefor

but the sum of $2,500, and having the same bonds credited at the full face value to his account and charged to the bank, thereby misapplying the difference between the amount that he paid for them and the amount that he charged the bank for them, the amount of $2,500, he knowing at that time that these bonds were worthless.

The next count charges that upon the 12th of February, 1894, he did take into his possession and fraudulently embezzle and convert to his own use property of the bank, in different forms of money, to the amount of $7,500.

The next count of the indictment shows again, more fully, how this was done, by charging that he misapplied funds and credits of the bank to the sum of $7,500, by buying from John A. Bishop bonds of the Globe Phosphate Company of the par value of $10,000, and that he placed the bonds amongst the assets of the banking association for the full face value, $10,000, and placing the same to his own personal credit, when he paid therefor only $2,500, charging him with the misapplication of the difference, $7,500, he knowing that the bonds were worthless.

The seventh count is that he did have and receive and take into his possession and embezzle and convert to his own use moneys, funds, and credits of the bank aggregating the amount of $7,500.

40 The eighth count is the same, explaining more fully how he did that by charging that he did unlawfully and willfully misapply the moneys of the bank to the amount of $7,500.00 by purchasing bonds of the Globe Phosphate Company of the face value of $10,000 for $2,500.00 and placing them among the assets of the bank at their full face value, and causing that value to be placed to his own personal credit and charged to the account of the bank, when he well knew that such bonds were worthless.

You will see there are charged in this indictment but three acts or transactions; the different counts charge the result of these acts in different ways. The first act or transaction charged was that the defendant caused the check of $3,400.00 to be placed to his credit, which in reality was the property of the bank. The testimony in support of this charge, you will recall, tended to show that there was among the assets of the bank a certificate for 1,700 shares of the Marion Phosphate Company, as shown by the account of stocks and securities when it came into the possession of the receiver, but that this certificate was not found among the assets of the bank, but that a check from a Savannah bank was found stating that it had been given in payment for the 1,700 shares of this phosphate company; that this check was received and presented by the defendant to a clerk of the bank, who was told by him to make a deposit slip to the credit of his account, and that that deposit slip was made and entered to the personal credit of the defendant at his request and by his direction.

Mr. McDonald has testified to a conversation with the defendant regarding this check of $3,400; that he, the defendant, admitted that he had done wrong, and agreed to pay the amount to the bank. This act is made the basis of the first two counts of the indictment—

in misapplying the funds of the bank in one count and in causing a false entry to be made in the other count.

You have the explanation of the defendant upon this matter, in which he says that he did not direct this amount to be placed
41 to his personal credit, but simply directed that it should be entered up, and that he did not know until after the failure of the bank that the amount had been placed to his own personal credit.

Upon the truth of those statements you are to determine your findings. You are the sole judges of the credibility of the witnesses and the conclusive evidence touching the facts in this case.

The question for you to determine—the two questions—are, first, as to the acts of the defendant, and, second, as to his intent.

If you find from the evidence and believe beyond a reasonable doubt that the defendant did cause to be made a deposit slip for the amount of $3,400 in a check and to have such deposit slip placed to his personal credit, knowing the same check was the property of the bank, and that this was done with the intent or desire to take to his own account and credit the amount, and did wrongfully deprive and defraud the bank of that amount, and that that entry of such slip was made by the direction of the defendant, your findings upon this count will be guilty as charged.

But if you find, on the other hand, that, as the defendant states, he did not give any instructions to have the check entered to his own personal account, but simply to be entered up, and that in such transaction he had no intent of misapplying or placing to his own credit the $3,400, your finding will be not guilty.

In examining this question you may consider the evidence of Williams, the clerk; of Mr. McDonald, the receiver; the conversation had with the defendant, and the testimony of the defendant himself, and from this testimony arrive at your findings.

The three other acts upon which the six remaining counts are based relate to buying Globe Phosphate Company bonds and placing the same among the assets of the bank at their full face value and having that amount—the full face value—placed to his own personal credit, when he had purchased the same at a much reduced price, and when it is charged that he knew them to
42 be worthless, and it is thereby charged that he took from the bank the difference between what he paid and the amount that he had charged the bank and placed the same to his own personal credit upon the books.

These acts were all of the same character and nature and the testimony tending to prove them is about the same.

Two counts have been based upon each transaction, one charging the defendant with misapplying the funds of the bank and placing to his own use upon the books of the bank the balance between the amount paid and the amount he had credited to him, the other charging him with embezzling and fraudulently converting to his own use the same amount.

The same principle of law and rule for examination of testimony will apply to all of these six counts. You will recall the testimony

relating to them, that of Mr. Bishop touching the sale and the purchase, sale by himself and purchase by the defendant, the presenting of these bonds to the bank by the defendant and having them placed among the assets, and placing the face value of them to the credit of his own personal account by his direction, as shown by the testimony of the various witnesses, and determine from this testimony whether the defendant had so misapplied or embezzled the funds with which he is charged with misapplying or embezzling. The term embezzling of itself implies a fraudulent intent, but this statute goes further and declares that such misapplication or embezzlement must be made with an intent to injure or defraud the association.

Under the rules of law you are to determine all questions of fact and intent, but the decision of intent is to be controlled within a certain extent by the established principles of law. In regard to the six last counts you will inquire, then, whether these bonds of the Globe Phosphate Company were presented to the bank by the president of the bank, this defendant, whether they were by his order and direction placed among the assets of the bank at their full face value, and whether the amount was placed to his own personal credit and the bank charged with this amount.

43 You will then determine what the value of these bonds was, and whether his putting them into the account of the bank was an honest and valid transaction, or whether there was a credit given the defendant by his own direction to which he was not legally and justly entitled.

You will first determine these questions; then inquire with what intent or motive this was done. There is testimony tending to show that the defendant at the time of his thus depositing the bonds gave a guarantee that the bonds were good, and that he would guarantee the payment of principal and interest. You can take that into consideration, but such guarantee can only be considered as determining the value of those bonds at that time and the intent of the party in such transaction.

The testimony, which tends to show that no notice of this purchase was given to the board of directors or their consent asked, may be considered in this connection. This testimony, which tends to show that the defendant had, under the circumstances testified to, invested one-half of the capital of the bank in that class of securities without the consent or knowledge of the board of directors, may be taken into consideration in determining at that time what the intent of the defendant was.

The rule of law in regard to intent is that intent to defraud is to be inferred from willfully and knowingly doing that which is illegal and which in its necessary consequences and results must injure another. The intent may be presumed from the doing of a wrongful or fradulent or illegal act, and in this case if you find that the defendant placed that which was worthless or of little value among the assets of the bank at a greatly exaggerated value, and had that exaggerated value placed to his own personal account upon the books of the bank, from such a finding of fact you must necessarily infer that the intent with which he did that act was to injure or de-

fraud the bank; but this inference or presumption is not necessarily conclusive. There may be other evidence which may satisfy the jury that there was no such intent; but such an inference or
44 presumption throws the burden of proof upon the defendant, and the evidence upon him in rebuttal to do away with that presumption of guilty intent must be sufficiently strong to satisfy you beyond a reasonable doubt that there was no such guilty intent in such transaction.

There is but one question in this case in which you will find any difficulty. There have little questions come up on minor matters which, as they have been mentioned, I will charge you upon, although I do not think you could possibly have been misled.

The misapplication and misappropriation of the credits of a bank may show a party to be guilty, as well as the misapplication and misappropriation of funds or money itself. It is not necessary that a misapplication may be made in money or cash, but if the credit of a bank—if the accounts are willfully and fraudulently changed upon the books of a bank, so that a credit is placed to a certain personal account and charged to the bank, that is a willful misapplication of the credit of the bank, although it may not be in money.

The failure of the bank is not at all necessary. The crime when shown is just as much a crime, whether the bank succeeds in bridging over the trouble or not. It is not necessary at all to show that it injured the reputation or standing of the bank.

If you find that the defendant was president of the First National Bank of Ocala, and as such president did at or about the times charged in the indictment place among the assets of such bank the several bonds, as shown in the testimony, at their full face value when their value was very much less, and had such amount placed to his own personal credit and charged the same to the bank, and thereby obtained a credit from the bank for that about upon such insufficient consideration, the natural, necessary, and legal inference is that such transaction was done to obtain such credit and such moneys or property as such credit brought without a good and valuable consideration and with intent to injure and defraud
45 said bank, and such inference can only be overcome by testimony satisfactory to you that there was no such intent.

As I say again, gentlemen, the only difficult question for you to determine is the intent of the accused. The question of the intent is to be determined by the facts and circumstances and the surroundings at the time of the transaction; but, gentlemen, the law presumes that every party who in any way attempts anything by any guarantee or anything of that kind which is dependent upon future successful operations takes the risk of the success, and that if a person commits an offence with the intent of temporarily injuring or defrauding another party or a banking institution, although it may be his intent at the time to finally recompense or prevent any injury resulting from such act, he is not protected by such intent to finally correct the temporary wrong deed; or, in this case, if you are satisfied that at the time he placed those bonds there he knew that they were worthless or of a very small value and had a large value

charged to the bank and placed to his account—if he did that with the intent, for the time being, to injure the bank and take a wrongful advantage of the credit of the bank, no matter if at that time he had an intent to in the future remedy any injury that might come to the bank, it would not protect him in your finding or from your finding, what the intent was at that time.

The intent of the defendant at the time he committed the transaction is the question for you to determine, and in arriving at a conclusion on that intent you will carefully weigh all of the testimony in the case. If you find, as I have charged you, that he had a guilty intent at that time, upon the facts charged in any of the counts—it is not necessary to find that he was guilty upon all the counts—a finding of guilty upon any one of the counts will justify a general finding of guilty.

If you are satisfied beyond a reasonable doubt that the transactions as charged were committed, and at the time he committed
46 those transactions he had an intent to defraud the bank, your verdict will be one of guilty. Unless you are satisfied beyond a reasonable doubt that he had such intent, your verdict will be not guilty.

In addition to my general charge, I am asked to give you certain instructions in behalf of the defendant and in behalf of the Government. I will give you some of them; some of them I do not give, not because they may not be good law, but because I do not consider they are necessary or controlling in this case.

"The misappropriation of the funds of a national bank by an officer in the honest exercise of official discretion, in good faith, without fraud, for the advantage or supposed advantage of the bank, is not punishable." I give you that charge, that if you find that there was nothing but an honest transaction, believed at the time to be for the benefit of the bank, your verdict will be not guilty.

"The jury must be satisfied beyond a reasonable doubt as regards the guilt of the accused before they can find a verdict of guilty." I also charge you, "By a reasonable doubt is not meant a possible doubt, but such a doubt arising from the evidence that leaves the minds of the jury in such a state that they cannot say, after having viewed all the evidence, that they have an abiding conviction, to a moral certainty, of the guilt of the accused."

"If the jury find from the evidence that the sum of $3,400, representing the amount of the check, was credited upon the books of the First National Bank of Ocala to the private account of the defendant, E. W. Agnew, then, unless they also find from the evidence that it was done by the defendant or by his direction for the purpose of defrauding and with the intent to defraud the association, their verdict upon the charge of having made a false entry must be in favor of the defendant."

I give you that instruction, if you find that it was entered without his direction and by a misunderstanding by the clerk, or with-
47 out the knowledge of the defendant your verdict upon those counts, the false entry, will be not guilty.

In behalf of the Government I am asked to give certain instruc-

tions; a portion of them I will give; a portion I consider has been covered by the general charge.

"The defendant is presumed to be innocent of all the charges against him until he is proven guilty by the evidence submitted to you. This presumption remains with the defendant to such time in the progress of the case as that you are satisfied of his guilt beyond a reasonable doubt."

"Under an indictment for the willful and criminal misapplication of the funds of a national bank by its officer, it is sufficient if the misapplication is made by an officer or by some one under his direction and control, either for his benefit or the benefit of some one other than the association, with the intent to injure and defraud the association."

It is not necessary that the defendant in any case make the misapplication directly himself, if it is done by any one under his control or direction.

"The crime of making false entries by an officer of a national bank with the intent to defraud, defined in the Revised Statutes of the United States, section 5209, includes any entry on the books of the bank which is intentionally made to represent what is not true or does not exist, with the intent either to deceive its officers or to defraud the association. The crime may be committed personally or by direction."

Therefore the entry of a slip upon the books of the bank, if the matter contained in that deposit slip is not true, is a false entry. If the statement made upon the deposit slips is false, the entry of it in the bank and the books of the bank is false.

"Under an indictment for the embezzlement of the funds of a banking association by its officer it is not necessary that the jury should find that the exact sum stated in the indictment was em-
48 bezzled; it is sufficient for them to find that the defendant embezzled any of the funds or assets of the said association or any of the credits of any kind."

If you find there was a guilty intent, it is not necessary for you to determine any amount.

"The law presumes that every man intends the legitimate consequence of his own acts. Wrongful acts knowingly or intentionally committed can neither be justified or excused on the ground of innocent intent. The color of the act determines the complexion of the intent. The intent to injure or defraud is presumed when the unlawful act, which results in loss or injury, is proved to have been knowingly committed. It is a well-settled rule, which the law applies in both criminal and civil cases, that the intent is presumed and inferred from the result of the action. If, therefore, the funds, moneys, or credits of the First National Bank of Ocala are shown to have been either embezzled or willfully misapplied by the accused and converted to his own use, whereby, as a necessary, natural, or legitimate consequence, the association's capital was reduced or placed beyond the control of the directors or its ability to meet its engagements or obligations or to continue its business was less-

ened or destroyed, the intent to injure or defraud the bank may be presumed."

Finally, I will instruct you, as requested by the attorney in behalf of the Government, as to what is a reasonable doubt.

"A reasonable doubt as employed in criminal law is an honest, substantial misgiving generated by the sufficiency of the evidence. It is not a doubt suggested by the ingenuity of the counsel or jury unwarranted by the testimony, nor one born of a merciful inclination to permit the defendant to escape, nor one prompted by sympathy for the defendant or those connected with him." It is a doubt as to the sufficiency of the evidence only.

If you find the party defendant committed those acts as charged in the indictment with a guilty intent and an intent to defraud,
49 your verdict will be guilty; that must be found beyond a reasonable doubt. Unless you so find, your verdict will be not guilty. You can retire, gentlemen, and consider your verdict.

Certified to be correct.

JAMES W. LOCKE, *Judge.*

Endorsed: 281. United States *vs.* Enoch W. Agnew. Judge's charge. Filed Jan. 7, 1896. E. O. Locke, clerk.

50 And defendant, by counsel, makes a motion for a new trial as follows, viz:

In the Circuit Court of the United States, Southern District of Florida,
Regular Term, December, 1895.

UNITED STATES *vs.* ENOCH W. AGNEW. } Indictment for Violation Sec. 5209, Revised Statutes.

And now comes the defendant, Enoch W. Agnew, by E. K. Foster and E. R. Gunby, his attorneys, and moves the court for a new trial on the following grounds:

1st. That the court erred in sustaining the demurrer to the plea of abatement.

2nd. That the court erred in, over the defendant's exception, allowing such of the jurors as desired to take notes of the testimony to do so, and thereby allowing W. A. McDuff, L. H. Mattair, Geo. S. Ferry, and Jacob Burkheim, jurors in the case, to take notes and memoranda of the evidence during said trial, as given by the witnesses on the stand.

3d. That the court erred in charging the jury as follows: "The testimony which tends to show that no notice of this purchase was given to the board of directors, or their consent asked, may be considered in this connection, and this testimony, that to show that the defendant had, under the circumstances shown and testified to, invested one-half of the capital of the bank in that class of securities

without the consent or knowledge of the board of directors, may be taken into consideration in determining at that time what the intent of defendant was."

4th. That the court erred in charging the jury as follows: "The rule of law in regard to intent is that intent to defraud is to be inferred from the willfully and knowingly doing that which is illegal, and which in its necessary consequences and results must injure another. The intent may be presumed from the doing of a
51 wrongful or fraudulent or illegal act. and in this case if you find that the defendant placed that which was worthless or of little value among the assets of the bank at a greatly exaggerated value, and had that exaggerated value placed to his own personal account upon the books of the bank, from such finding of fact you must necessarily infer that the intent with which he did that act was to injure or defraud the bank; but this inference or presumption is not necessarily conclusive. There may be other evidence which may satisfy the jury that there was no such intent; but such an inference or presumption throws the burden of proof upon the defendant, and the evidence upon him in rebuttal to do away with that presumption of guilty intent must be sufficiently strong to satisfy you beyond a reasonable doubt that there was no such guilty intent in such transaction."

5th. That the court erred in charging the jury as follows: "The misapplication and misappropriation of the credits of a bank may show a party to be guilty as well as the misapplication and misappropriation of funds or money itself. It is not necessary that a misapplication may be made in money or cash, but if the credit of a bank—if the accounts are willfully and fraudulently changed upon the books of a bank, so that a credit is placed to a certain personal account and charged to the bank, that is a willfully misapplication of the credits of the bank, although it may not be in money.

6th. That the court erred in charging the jury as follows: "If you find that the defendant was president of the First National Bank of Ocala, and as such president did, at or about the times charged in the indictment, place among the assets of such bank the several bonds, as shown in the testimony, at their full face value, when their value was very much less, and had such amount placed to his own personal credit and charged the same to the bank, and thereby obtained a credit to the bank of that amount upon such insufficient consideration, the natural, necessary, and legal inference is that such transaction was done to obtain such credit and
52 such moneys or property as such credit brought, without a good and valuable consideration and with intent to injure and defraud said bank, and such inference can only be overcome by testimony satisfactory to you that there was no such intent.

7th. The court erred in charging the jury as follows: "As I say again, gentlemen, the only difficult question for you to determine is the intent of the accused. The question of the intent is to be determined by the facts and circumstances and the surroundings at the time of the transaction. But, gentlemen, the law presumes that

every party who in any way attempts anything, by any guarantee or anything of that kind which is dependent upon future successful operations, takes the risk of the success; and if a person commits an offence with the intent of temporarily injuring or defrauding another party or a banking institution, although it may be his intent at the time to finally recompense or prevent any injury resulting from such act, he is not protected by such intent to finally correct the temporary wrong deed; or, in this case, if you are satisfied that at the time he placed those bonds there he knew that they were worthless or of a very small value and had a large value charged to the bank and placed to his account—if he did that with the intent for the time being to injure the bank and take a wrongful advantage of the credit of the bank, no matter if at that time he had an intent to in the future remedy any injury that might come to the bank—it would not protect him in your finding or from your finding what the intent was at that time."

That the court erred in giving the following charge: "The intent of the defendant at the time he committed the transaction is the question for you to determine, and in arriving at a conclusion of that intent you will carefully weigh all of the testimony in the case. If you find, as I have charged you, that he had a guilty intent at that time, your verdict upon any of the counts—it is not necessary to find that he was guilty upon all the counts—a finding upon any one count will justify a general finding of guilty."

53 That the court erred in not giving the following instructions asked for by the defendant:

1st. "Every man is presumed to be innocent until he is proved guilty, and this legal presumption of innocence is to be regarded by the jury in this case as matter of evidence to the benefit of which the party is entitled. This presumption is to be treated by you as evidence, giving rise to resulting proof to the full extent of its legal efficacy."

2d. The court erred in not giving the following instructions asked for by the defendant:

"The making of a false entry is a concrete offence, which is not committed where the transaction entered actually took place and is entered exactly as it occurred."

3d. The court erred in not giving following instructions asked for by the defendant:

"The truthful entry of a transaction charged as fraudulent does not constitute a false entry within the meaning of the statute."

4th. That the court erred in not giving the following instruction asked for by the defendant:

"If the jury shall find from the evidence that on the 15th day of April, 1895, E. W. Agnew, upon the receipt of the check of the Merchants' National Bank of Savannah for $3,400, used that check and the proceeds of it for the payment of a debt of the First National Bank of Ocala, then they must find upon that count in the indictment that he did not fraudulently embezzle or misapply the check or the proceeds of it."

That the court erred in not giving the following instructions asked for by the defendant:

"The defendant further prays the court to instruct the jury that the written guarantee introduced and filed in evidence, signed by E. W. Agnew and conditioned for the payment of the interest and principal of the bonds of the Globe Phosphate Mining Com-
54 pany, was upon its face a good, legal, and sufficient guarantee, and that if the jury shall find from the evidence that at the time of the delivery by E. W. Agnew to the cashier of the First National Bank of Ocala of the bonds of the Globe Phosphate Mining Company in controversy he also delivered the guarantee which has been introduced in evidence, and they shall further find from the evidence that at the time said guarantee was signed and delivered that E. W. Agnew, the defendant, was solvent and thoroughly able to respond to the obligation, and that he signed and delivered the guarantee with the knowledge of his solvency and with the intent to pay the same when demand was made upon him for payment, then the jury may find from the evidence that the defendant did not convert or misapply the money arising from the sale of the said bonds with intent to defraud the association or any one else."

That the court erred in giving the following instruction asked for by the U. S. attorney:

1st. "The defendant is presumed to be innocent of all the charges against him until he is proven guilty by the evidence submitted to you. This presumption remains with the defendant to such time in the progress of the case as that you are satisfied of his guilt beyond a reasonable doubt."

2nd. That the court erred in giving the following instruction asked for by the U. S. attorney:

"The crime of making false entries by an officer of a national bank with the intent to defraud, defined by the Revised Statutes of the United States, section 5209, includes any entry on the books of the bank which is intentionally made to represent what is not true or does not exist with the intent either to deceive its officers or to defraud the association. The crime may be committed personally or by direction."

3d. That the court erred in giving the following instruction asked for by the U. S. attorney:

"The law presumes that every man intends the legitimate consequences of his own acts; wrongful acts knowingly or intentionally committed can neither be justified -or excused on the ground
55 of innocent intent. The color of the act determines the complexion of the intent. The intent to injure or defraud is presumed when the unlawful act which results in loss or injury is proved to have been knowingly committed. It is a well-settled rule which the law applies in both criminal and civil cases that the intent is presumed and inferred from the result of the action until some other testimony. If, therefore, the funds, moneys, or credits of the First National Bank of Ocala are shown to have been either embezzled or willfully misapplied by the accused and converted to his own use, whereby as a necessary, natural, or legitimate conse-

quence the association's capital was reduced or placed beyond the control of the directors or its ability to meet its engagement- or obligations or to continue its business was lessened or destroyed, the intent to injure or defraud the bank may be presumed."

That the court erred in giving the following instruction asked for by the U. S. attorney:

"A reasonable doubt as employed in criminal law is an honest substantial misgiving generated by the insufficiency of the evidence; it is not a doubt suggested by the ingenuity of the counsel or jury unwarranted by the testimony, nor one born of a merciful inclination to permit the defendant to escape, nor one prompted by sympathy for the defendant or those connected with him. It is a doubt as to the sufficiency of the evidence only."

That the verdict is contrary to the evidence.

That the verdict is contrary to the law of the case.

E. K. FOSTER,
E. R. GUNBY,
Att'ys for Def't.

Jan. 8th, 1896.

56 TUESDAY, *January 14th*, 1896.

Present: Hon. James W. Locke, district judge.

Ordered that court be opened.

And court is opened by due proclamation.

U. S.
vs.
ENOCH W. AGNEW. } # 281. Sec. 5209, R. S.

Defendant being present with counsel, motion for a new trial is submitted and the motion is denied.

And motion for arrest of judgment is submitted and denied as follows:

U. S.
vs.
E. W. AGNEW.

Now comes the defendant and moves for arrest in judgment on the ground that the indictment was found by an illegal grand jury.

FOSTER & GUNBY,
Att'ys for Def't.

Motion denied this 14th day of January, A. D. 1896.

JAMES W. LOCKE, *Judge.*

Exception noted by att'ys for the defense.

And sentence is pronounced, viz:

Ordered that Enoch W. Agnew, convicted of violation section 5209, R. S., be imprisoned by confinement in Kings county penitentiary, in Brooklyn, N. Y., for a term of five years.

And defendant, by his counsel, presents a petition for writ of error

to the Supreme Court of the United States, with prayer that the same operate as a supersedeas.

And said writ and prayer are allowed, and twenty-five days are allowed for filing bill of exceptions.

57 Ordered that defendant be admitted to bail pending appeal in the sum of $10,000.00, the sureties to justify before a U. S. commissioner at Ocala; that bond be approved by the court, and, until the approval of said bond, defendant remain in custody of the marshal.

* * * * * * *

Said petition, assignment of errors, and order being as follows, viz:

58 In the Circuit Court of the United States of America for the 5th Judicial Circuit in and for the Southern District of Florida.

UNITED STATES *vs.* E. W. AGNEW. } Indictment for Violationof Section 5209, Revised Statutes of the U. S.

Now comes the defendant, Enoch W. Agnew, and petitions the court that a writ of error issue for the removal of the above-entitled cause to the Supreme Court of the United States, and that upon the issuing of such writ of error a proper transcript be made and returned and citation issue and the writ of error be ordered to operate as a supersedeas, the said Enoch W. Agnew assigning as error the errors claimed and attached to this petition.

Jan. 14th, 1896.

ENOCH W. AGNEW,
By E. K. FOSTER,
E. R. GUNBY,
His Attorneys.

The foregoing petition is granted, and it is ordered that a writ of error be allowed.

January 14, 1896.

JAMES W. LOCKE, *Judge.*

59 1st assignment of error. That the court erred in sustaining the demurrer to the defendant's plea in abatement.

For the second assignment of error the defendant sets forth that on the empanelling of the jury L. H. Mattair, a juror, addressed the court as follows: "Can we take notes and jot down any items on paper?" to which question the court replied: Certainly; you have a right to assist your memory in any way that is consistent with your conscience. And subsequently, after some testimony had been offered, the court further on said point addressed the jury as follows: I will say, gentlemen of the jury, that in the matter of permitting jurymen to take such notes as he sees fit I do not desire or consent that these notes shall in any way control the minds of

any other jurors at all; it is simply for his own personal convenience; and, gentlemen, I want you to understand that your memory and recollection of the testimony is to be the controlling element in enabling you to arrive at a just verdict in this case, and in permitting the juror to take such notes as he may see fit I do not desire the jury to understand that those notes are at all in any way to influence you in the least. I thought I would call your attention to this fact.

3d assignment of error. That the court erred in admitting the cash books and the entries thereon as offered by the United States in the testimony of one Massey, a witness introduced by the United States, and in refusing to strike all the testimony of said witness in reference to said cash books and the entries thereon made by him from the evidence as irrelevant and improper.

4th assignment of error. That the court erred in refusing to allow the witness Alex. McIntyre to answer the question put to him by the defendant's counsel, "Do you know what his commercial rating was at that time?"

5th assignment of error. That the court erred in allowing, over the defendant's objection, the witness Alex. McIntyre to be
60 asked "why he resigned as cashier of the bank in June, 1894," and permitting him to answer said questions.

6th assignment of error. That the court erred in refusing to allow the witness W. B. Barnett to testify as to whether Mr. Agnew's guarantee for $20,000 at the time he made it was good, and in striking out the testimony of the witness W. B. Barnett.

7th assignment of error. That the court erred in not allowing the witness Stuart to testify as to the rating of Dun's Commercial Agency of E. W. Agnew at the time he gave the guarantee for $20,000.

8th assignment of error. That the court erred in not allowing the defendant, E. W. Agnew, while testifying, to answer the following question: "From the information you got and the investigation you made, what was the value of the Globe Phosphate Co. lands at the time you purchased?"

9th assignment of error. That the court allowed the U. S. attorney to ask the defendant, E. W. Agnew, when he was testifying in his behalf, the following question and requiring an answer to the same: "Isn't it true that the firm of E. W. Agnew & Co. has been swept out of existence and could not pay its liabilities?"

10th assignment of errors. That the court erred in giving to the jury the following charges: "The testimony which tends to show that no notice of this purchase was given to the board of directors or their consent asked may be considered in this connection. This testimony, which tends to show that the defendant had under the circumstances testified to show invested one-half of the capital of the bank in that class of securities without the consent or knowledge of the board of directors, may be taken into consideration in determining at that time what the intent of the defendant was.

"The rule of law in regard to intent is that intent to defraud is to be inferred from wilfully and knowingly doing that which is
61 illegal and which, in its necessary consequences and results,

must injure another. The intent may be presumed from the doing of the wrongful or fraudulent or illegal act, and in this case, if you find that the defendant placed that which was worthless or of little value among the assets of the bank at a greatly exaggerated value and had that exaggerated value placed to his own personal account upon the books of the bank, from such finding of fact you must necessarily infer that the intent with which he did that act was to injure or defraud the bank, but this inference or presumption is not necessarily conclusive. There may be other evidence which may satisfy the jury that there was no such intent, but such an inference or presumption throws the burden of proof upon the defendant, and the evidence upon him in rebuttal to do away with that presumption of guilty intent must be sufficiently strong to satisfy you beyond a reasonable doubt that there was no such guilty intent in such transaction.

"The misapplication and misappropriation of the credits of a bank may show a party to be guilty as well as the misapplication and misappropriation of funds or money itself. It is not necessary that a misapplication be made in money or cash, but if the credit of a bank—if the accounts are wilfully and fraudulently changed upon the books of a bank so that a credit is placed to a certain personal account and charged to the bank, that is a wilfull misapplication of the credits of the bank, although it may not be in money.

"If you find that the defendant was president of the First National Bank of Ocala and as such president did, at or about the times charged in the indictment, place among the assets of such bank the several bonds, as shown in the testimony, at their full face value when their value was very much less, and had such amount placed to his own personal credit and charged the same to the bank, and thereby obtained a credit from the bank of that amount upon such insufficient consideration, the natural, necessary,
and legal inference is that such transaction was done to ob-
62 tain such credit and such moneys or property as such credit
brought without a good and valuable consideration and with intent to injure and defraud said bank, and such inference can only be overcome by testimony satisfactory to you that there was no such intent.

"As I say again, gentlemen, the only difficult question for you to determine is the intent of the accused. The question of the intent is to be determined by the facts and circumstances and the surroundings at the time of the transaction; but, gentlemen, the law presumes that every party who in any way attempts anything, by any guarantee or anything of that kind which is dependent upon future successful operations, takes the risk of the success, and that if a person commits an offence with the intent of temporarily injuring or defrauding another party or a banking institution, although it may be his intent at the time to finally recompense or prevent any injury resulting from such act, he is not protected by such intent to finally correct the temporary wrong deed; or, in this case, if you are satisfied that at the time he placed those bonds there he knew that they were worthless or of a very small value and had a large

value charged to the bank and placed to his account, if he did that with the intent for the time being to injure the bank and take a wrongful advantage of the credit of the bank, no matter if at that time he had an intent to in the future remedy any injury that might come to the bank, it would not protect him in your finding or from your finding what the intent was at the time.

"The intent of the defendant at the time he committed the transaction is the question for you to determine, and in arriving at a conclusion of that intent you will carefully weigh all of the testimony in the case. If you find, as I have charged you, that he had a guilty intent at that time upon the facts charged in any of the counts, it is not necessary to find that he was guilty upon all the counts. A finding upon any one count will justify a general finding of guilty."

63 11th. That the court erred in giving the following instruction asked for by the U. S. attorney: "The defendant is presumed to be innocent of all the charges against him until he is proven guilty by the evidence submitted to you. This presumption remains with the defendant to such time in the progress of the case as that you are satisfied of his guilt beyond a reasonable doubt."

12. That the court erred in giving the following instruction asked for by the U. S. attorney: "The crime of making false entries by an officer of a national bank with the intent to defraud, defined in the Revised Statutes of the United States, section 5209, includes any entry on the books of the bank which is intentionally made to represent what is not true or does not exist with the intent either to deceive its officers or to defraud the association. The crime may be committed personally or by direction. Therefore the entry of a slip upon the books of the bank, if the matter contained in that deposit slip is not true, is a false entry. If the statement made upon the deposit slip is false, the entry of it in the bank and the books of the bank is false."

13. That the court erred in giving the following instruction asked for by the U. S. attorney: "The law presumes that every man intends the legitimate consequence of his own acts. Wrongful acts, knowingly or intentionally committed, can neither be justified or excused on the ground of innocent intent. The color of the act determines the complexion of the intent. The intent to injure or defraud is presumed when the unlawful act which results in loss or injury is proved to have been knowingly committed. It is a well-settled rule, which the law applies in both criminal and civil cases, that the intent is presumed and inferred from the result of the actions. If, therefore, the funds, moneys, or credits of the First National Bank of Ocala are shown to have been either em-

64 bezzled or willfully misapplied by the accused and converted to his own use, whereby, as a necessary, natural, or legitimate consequence the association's capital was reduced or placed beyond the control of the directors or its ability to meet its engagements or obligations or to continue its business was lessened or destroyed, the intent to injure or defraud the bank may be presumed."

14. That the court erred in giving the following instruction

asked for by the U. S. attorney: "A reasonable doubt, as employed in criminal law, is an honest, substantial misgiving, generated by the insufficiency of the evidence; it is not a doubt suggested by the ingenuity of the counsel or jury, unwarranted by the testimony, nor one born of a merciful inclination to permit the defendant to escape, nor one prompted by sympathy for the defendant or those connected with him; it is a doubt as to the sufficiency of the evidence only."

15th. That the court erred in not giving the following instructions asked for by the defendant: "Every man is presumed to be innocent until he is proved guilty, and this legal presumption of innocence is to be regarded by the jury in this case as matter of evidence to the benefit of which the party is entitled. This presumption is to be treated by you as evidence giving rise to resulting proof to the full extent of its legal efficacy."

16th. "The making of a false entry is a concrete offense which is not committed where the transaction entered actually took place and is entered exactly as it occurred."

17th. "The truthful entry of a transaction charged as fraudulent does not constitute a false entry within the meaning of the statute."

18th. "If the jury shall find from the evidence that on the 15th day of April, A. D. 1895, E. W. Agnew, upon receipt of the check of the Merchants' National Bank of Savannah for $3,400, used that check and the proceeds of it for the payment of a debt of the
65 First National Bank of Ocala, then they must find upon that count in the indictment that he did not fraudulently embezzle or misapply the check or the proceeds of it."

19th. That the court erred in not giving the following instruction also asked for by the defendant: "That the written guarantee introduced and filed in evidence, signed by E. W. Agnew, and conditioned for the payment of the interest and principal of the bonds of the Globe Phosphate Mining Company was upon its face a good, legal, and sufficient guarantee, and that if the jury shall find from the evidence that at the time of the delivery by E. W. Agnew to the cashier of the First National Bank of Ocala of the bonds of the Globe Phosphate Mining Company in controversy he also delivered the guarantee which has been introduced in evidence, and they shall further find from the evidence that at the time said guarantee was signed and delivered that E. W. Agnew, the defendant, was solvent and thoroughly able to respond to the obligation, and that he signed and delivered the guarantee with the knowledge of his solvency and with intent to pay the same when demands was made upon him for payment, then the jury may find from the evidence that the defendant did not invest or misapply the money arising from the sale of the said bonds with intent to defraud the association or any one else."

That the court erred in not granting the motion for new trial.

That the court erred in not granting the motion in arrest of judgment.

E. K. FOSTER,
Att'y for Defendant.

Endorsed: # 281. United States *vs.* Enoch W. Agnew. Assignment of error, petition, and order. Filed Jan. 14, 1896. E. O. Locke, clerk.

66 In the Circuit Court for the 5th Judicial Circuit of the United States of America in and for the Southern District of Florida.

UNITED STATES *vs.* ENOCH W. AGNEW. } Indictment for Violation Section 5209, Revised Statutes of the U. S.

On this day here comes Enoch W. Agnew, by his attorneys, and the court, having considered the motion of the said Enoch W. Agnew for a new trial of this cause and being now fully advised concerning the same, denies and overrules the said motion for a new trial, and thereupon the said Enoch W. Agnew, by his attorney aforesaid, moves the court to arrest the judgment upon the verdict herein, and the court, having considered and being now fully advised concerning the said motion in arrest of judgment, denies and overrules the same, and, the U. S. district attorney for the said United States now moving for judgment upon the verdict aforesaid and the court being now fully advised concerning the premises, it is therefore considered by the court and it is the sentence and judgment of the court that the said Enoch W. Agnew be imprisoned in the Kings County penitentiary for the term of five years; and thereupon, at the instance of the said Enoch W. Agnew, it is ordered by the court that he have twenty-five days from this day in which to present and file a bill of exceptions in this behalf. Done in open court this 14th day of January, A. D. 1896.

JAMES W. LOCKE, *Judge.*

Endorsed: # 281. United States *vs.* Enoch W. Agnew. Order fixing time for bill of exceptions. Filed Jan. 14th, 1896. E. O. Locke, clerk.

67 And defendant files his appeal bond, viz:

Know all men by these presents that we, Enoch W. Agnew, as principal, and Samuel Agnew, B. Arentz, James V. Burke, and Samuel R. Pyles, as sureties, are held and firmly bound unto the United States of America in the sum of two hundred and fifty dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 15th day of January, in the year one thousand eight hundred and ninety-six.

The condition of this obligation is such that whereas on the fourteenth day of January, A. D. 1896, by the consideration of the circuit court of the said United States for the southern district of Florida, in a certain criminal cause, to wit, a certain indictment against the above-named Enoch W. Agnew for violation of section

5209 of the Revised Statutes of the United States, being criminal cause number 281 in that court, the said Enoch W. Agnew was adjudged and sentenced to imprisonment in the Kings County penitentiary for the term of five years; and whereas, upon the petition of the said Enoch W. Agnew, James W. Locke, district judge of the said United States for the southern district of Florida, sitting as circuit judge for the fifth judicial circuit of the United States, at Jacksonville, Florida, within his district and within said circuit, has allowed a writ of error from Supreme Court of the United States to the said circuit court upon the judgment and sentence aforesaid, and such writ of error is about to issue accordingly: Now, if the said Enoch W. Agnew shall prosecute the said writ to effect and shall abide the judgment of the said Supreme Court of the United States in that behalf and shall answer all costs in case he shall fail to make good his plea, then this obligation shall be void, and otherwise shall remain in full force.

ENOCH W. AGNEW. [SEAL.]
SAMUEL AGNEW. [SEAL.]
B. ARENTZ. [SEAL.]
JAMES V. BURKE. [SEAL.]
SAMUEL R. PYLES. [SEAL.]

68 Signed, sealed, and acknowledged before me, David S. Williams, United States commissioner for the circuit court, southern district of Florida, this 15th day of January, A. D. 1896.

DAVID S. WILLIAMS,
[SEAL.] *U. S. Commissioner.*

69 UNITED STATES OF AMERICA, }
Southern District of Florida, } *ss:*

B. Arentz, as surety on the within recognizance, being duly sworn, deposes and says that he resides at Ocala, in the county of Marion, in said district, and that he is worth the sum of one hundred thousand dollars over and above all just debts and liabilities in property subject to execution and sale, and that property consists of personal property, lands, and mines situated in the counties — Marion and Alachua, in the State of Florida.

(Affiant's signature:)

B. ARENTZ.

Sworn to and subscribed before me this 15th day of January, A. D. 1896.

DAVID S. WILLIAMS,
Commissioner U. S. Circuit Court,
Southern District of Florida. [SEAL.]

70 UNITED STATES OF AMERICA, }
Southern District of Florida, } *ss:*

James V. Burke, as surety on the within recognizance, being duly sworn, deposes and says that he resides at Ocala, in the county of

Marion, in said district, and that he is worth the sum of sixty thousand dollars over and above all just debts and liabilities in property subject to execution and sale, and that property consists of personal property and real estate situated in the counties of Marion, Citrus, and Hernando, and Levy, in the State of Florida.

(Affiant's signature:)

JAMES V. BURKE.

Sworn to and subscribed before me this 15th day of January, A. D. 1896.

DAVID S. WILLIAMS,
Commissioner U. S. Circuit Court,
Southern District of Florida. [SEAL.]

71 UNITED STATES OF AMERICA, } ss:
Southern District of Florida, }

Samuel R. Pyles, as surety on the within recognizance, being duly sworn, deposes and says that he resides at Ocala, in the county of Marion, in said district, and that he is worth the sum of five thousand dollars over and above all just debts and liabilities in property subject to execution and sale, and that property consists of personal property and real estate situated in the counties of Marion, Citrus, Levy, and Alachua, in the State of Florida.

(Affiant's signature:)

SAMUEL R. PYLES.

Sworn to and subscribed before me this 15th day of January, A. D. 1896.

DAVID S. WILLIAMS,
Commissioner U. S. Circuit Court,
Southern District of Florida. [SEAL.]

Approved:
JAMES W. LOCKE, *Judge.*

Endorsed: #281. U. S. circuit court, southern district of Florida. United States *vs.* Enoch W. Agnew. Bond for appeal. Filed Jan. 16th, 1896. E. O. Locke, clerk.

72 UNITED STATES OF AMERICA, } ss:
Southern District of Florida, }

The sureties named in the within recognizance are personally known to me, and I believe them to be worth the amount of property as shown in the affidavits sworn to before me, and I therefore have approved said bond.

Witness my hand and official seal this 15th day of January, A. D. 1896.

DAVID S. WILLIAMS,
Commissioner U. S. Circuit Court,
Southern District of Florida. [SEAL.]

73 And appearance bond was filed as follows, viz:

Know all men by these presents that we, Enoch W. Agnew, as principal, and Samuel Agnew, B. Arentz, James V. Burke, John W. Pearson, Samuel R. Pyles, D. A. Miller, S. W. Moody, as sureties, are held and firmly bound unto the United States of America in the sum of ten thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 15th day of January, in the year one thousand eight hundred and ninety-six.

The condition of this obligation is such that whereas on the fourteenth day of January, A. D. 1896, by the consideration of the circuit court of the said United States for the southern district of Florida, in a certain criminal cause, to wit, a certain indictment against the above-named Enoch W. Agnew for the violation of section 5209 of the Revised Statutes of the United States, being criminal cause number 281 in that court, the said Enoch W. Agnew was adjudged and sentenced to imprisonment in the Kings County penitentiary for the term of five years;

And whereas, upon the petition of the said Enoch W. Agnew, James W. Locke, district judge of the said United States for the southern district of Florida, sitting as circuit judge of the said United States for the fifth judicial circuit, at Jacksonville, Florida, within said circuit, has allowed a writ of error from the Supreme Court of the United States to the said circuit court upon the judgment and sentence aforesaid, and has ordered that said writ of error operate as a stay of proceedings under the said judgment and sentence, and that the said Enoch W. Agnew be admitted to bail in that behalf in the sum of ten thousand dollars above mentioned; and whereas such writ of error has issued accordingly and the citation in that behalf has been issued: Now, if the said Enoch W. Agnew shall personally be and appear before the said circuit court on the first day of the next regular term thereof, to be held at United States court-

74 house, in Jacksonville, Fla., in the said circuit, on the 1st Monday of December next, and from day to day thereafter during that and subsequent terms until the determination of the said writ of error, and shall not, at any of the terms of the said circuit court, depart that court without leave thereof, and shall, in case the judgment and sentence aforesaid is affirmed, surrender himself to the custody of marshal of the said United States for the southern district of Florida, then this obligation shall be void, and otherwise shall remain in full force.

ENOCH W. AGNEW. [SEAL.]
SAMUEL AGNEW. [SEAL.]
B. ARENTZ. [SEAL.]
JAMES V. BURKE. [SEAL.]
JOHN W. PEARSON. [SEAL.]
SAMUEL R. PYLES. [SEAL.]
D. A. MILLER. [SEAL.]
S. W. MOODY. [SEAL.]

THE UNITED STATES }
vs.
ENOCH W. AGNEW. }

Signed, sealed, and acknowledged before me, David S. Williams, United States commissioner for the circuit court of the southern district of Florida, this 15th day of January, A. D. 1896.

DAVID S. WILLIAMS,
Commissioner U. S. Circuit Court,
Southern District of Florida. [SEAL.]

75 UNITED STATES OF AMERICA, }
Southern District of Florida, } *ss:*

Samuel Agnew, as surety on the within recognizance, being duly sworn, deposes and says that he resides at Ocala, in the county of Marion, in said district, and that he is worth the sum of five thousand dollars over and above all just debts and liabilities in property subject to execution and sale, and that property consists of real estate in the counties of Levy, Hernando, and Marion and personal property.

(Affiant's signature:)

SAMUEL AGNEW.

Sworn to and subscribed before me this 15th day of January, A. D. 1896.

DAVID S. WILLIAMS,
Commissioner U. S. Circuit Court,
Southern District of Florida. [SEAL.]

UNITED STATES OF AMERICA, }
Southern District of Florida, } *ss:*

B. Arentz, as surety on the within recognizance, being duly sworn, deposes and says that he resides at Ocala, in the county of Marion, in said district; that he is worth the sum of one hundred thousand dollars over and above all just debts and liabilities in property subject to execution and sale, and that property consists of personal property, lands, and mines situate in the counties of Alachua and Marion, in said district.

(Affiant's signature:)

B. ARENTZ.

Sworn to and subscribed before me this 15th day of January, A. D. 1896.

DAVID S. WILLIAMS,
Commissioner U. S. Circuit Court,
Southern District of Florida. [SEAL.]

76 UNITED STATES OF AMERICA, }
Southern District of Florida, } *ss:*

J. V. Burke, as surety on the within recognizance, being duly sworn, deposes and says that he resides at Ocala, in the county of

Marion, in said district, and that he is worth the sum of sixty thousand dollars over and above all just debts and liabilities in property subject to execution and sale, and that property consists of personal property, real estate, and phosphate mines in the counties of Marion, Levy, Citrus, and Hernando, in the State of Florida.

(Affiant's signature:)

JAMES V. BURKE.

Sworn to and subscribed before me this 15th day of January, A. D. 1896.

DAVID S. WILLIAMS,
Commissioner U. S. Circuit Court,
Southern District of Florida. [SEAL.]

UNITED STATES OF AMERICA, }
Southern District of Florida, } ss:

John W. Pearson, as surety on the within recognizance, being duly sworn, deposes and says that he resides at Ocala, in the county of Marion, in said district, and that he is worth the sum of twenty-five hundred dollars over and above all just debts and liabilities in property subject to execution and sale, and that property consists of personal property and real estate situated in the counties of Marion, Lake, Citrus, and Levy, in the State of Florida.

(Affiant's signature:)

JOHN W. PEARSON.

Sworn to and subscribed before me this 15th day of January, A. D. 1896.

DAVID S. WILLIAMS,
Commissioner U. S. Circuit Court,
Southern District of Florida. [SEAL.]

77 UNITED STATES OF AMERICA, }
Southern District of Florida, } ss:

Samuel R. Pyles, as surety on the within recognizance, being duly sworn, deposes and says that he resides at Ocala, in the county of Marion, in said district, and that he is worth the sum of five thousand dollars over and above all just debts and liabilities in property subject to execution and sale, and that property consists of personal property and real estate situated in the counties of Marion, Citrus, Levy, and Alachua, in the State of Florida.

(Affiant's signature:)

SAMUEL R. PYLES.

Sworn to and subscribed before me this 15th day of January, A. D. 1896.

DAVID S. WILLIAMS,
Commissioner U. S. Circuit Court,
Southern District of Florida. [SEAL.]

UNITED STATES OF AMERICA, } ss:
Southern District of Florida, }

D. A. Miller, as surety on the within recognizance, being duly sworn, deposes and says that he resides at Ocala, in the county of Marion, in said district, and that he is worth the sum of twenty-five hundred dollars over and above all just debts and liabilities in property subject to execution and sale, and that property consists of personal property and real estate in Marion county, in the State of Florida.

(Affiant's signature:)

D. A. MILLER.

Sworn to and subscribed before me this 15th day of January, A. D. 1896.

DAVID S. WILLIAMS,
Commissioner U. S. Circuit Court,
Southern District of Florida. [SEAL.]

78 UNITED STATES OF AMERICA, } ss:
Southern District of Florida, }

S-lomon W. Moody, as surety on the within recognizance, being duly sworn, deposes and says that he resides at Ocala, in the county of Marion, in said district, and that he is worth the sum of five hundred dollars over and above all just debts and liabilities in property subject to execution and sale, and that property consists of personal and real estate in the counties of Marion and Putnam, in the State of Florida.

(Affiant's signature:)

S. W. MOODY.

Sworn to and subscribed before me this 15th day of January, A. D. 1896.

DAVID S. WILLIAMS,
Commissioner U. S. Circuit Court,
Southern District of Florida. [SEAL.]

UNITED STATES OF AMERICA, } ss:
Southern District of Florida, }

The sureties named in the within recognizance are personally known to me, and I believe them to be worth the amount of property as shown in the affidavits sworn to before me, and I therefore have approved said bond.

Witness my hand and official seal this 15th day of January, A. D. 1896.

DAVID S. WILLIAMS,
Commissioner U. S. Circuit Court,
Southern District of Florida. [SEAL.]

Approved, and ordered that Enoch W. Agnew be released from custody of the marshal.

JAMES W. LOCKE, *Judge.*

Endorsed: # 281. U. S. circuit court, southern district of Florida. United States *vs.* Enoch W. Agnew. Appearance bond pending appeal. Filed Jan. 16th, 1896. E. O. Locke, clerk.

79 And writ of error is issued as follows, viz:

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the southern district of Florida, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between The United States of America and Enoch W. Agnew on an indictment for violation of section 5209, R. S., a manifest error hath happened, to the great damage of the said Enoch W. Agnew, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the thirteenth day of February, 1896, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court, the fourteenth day of January, in the year of our Lord one thousand eight hundred and ninety-six.

[SEAL.] E. O. LOCKE,
Clerk of the Circuit Court of the United States for the Southern District of Florida.

Allowed by—
JAMES W. LOCKE, *Judge.*

Endorsed: Enoch W. Agnew, pl'ff in error, *vs.* The United States, def't in error. Writ of error.

80 And citation is issued, service accepted, and filed as follows, viz:

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the thirteenth day of February, 1896, pursuant to a writ of error

filed in the clerk's office of the circuit court of the United States, wherein Enoch W. Agnew is plaintiff in error and you are defendant in error, to show cause, if any there be, why the sentence and judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14th day of January, in the year of our Lord one thousand eight hundred and ninety-six.

[SEAL.] E. O. LOCKE,
Clerk U. S. Circuit Court, Southern District of Florida.

Service of the above citation is hereby accepted this Jan. 15th, 1896.

FRANK CLERK,
U. S. District Attorney for the Southern District of Florida.

Endorsed: Enoch W. Agnew *vs.* The United States. Citation & return. Issued Jan. 14, 1896. Filed Jan. 15th, 1896. E. O. Locke, clerk.

And on Feb'y 6, 1896, the bill of exceptions of said Enoch W. Agnew is made up, presented, signed, and allowed as follows, viz:

81 In the Circuit Court for the Southern District of Florida, Fifth Judicial Circuit.

UNITED STATES *vs.* ENOCH W. AGNEW. } Indictment for Violation of Section 5209, R. S.

And the said Enoch W. Agnew in his own proper person comes into court here and, having heard the said indictment read, says that the grand jury which found said indictment was an illegal grand jury, in this, that after sixteen had failed to attend upon the regular venire the court ordered that a special venire issue for ten grand jurors to be drawn according to law; said grand jurors so ordered by the court were directed to be taken from the county of Duval; that the clerk and marshal in drawing said venire, whenever a name was legally drawn from the box, if said party so drawn was not from the county of Duval, laid aside said name and continued drawing until ten names from the county of Duval were obtained, and which illegal drawing of said venire tended to the prejudice of this defendant, and the court, on excusing three returned on the second venire, ordered that four names be drawn for jurors to complete the panel; that said jurors were ordered to be drawn from the box, and the clerk and marshal drawing the same were ordered to take those that were from Duval county as they came from the box, and the said clerk and marshal, as the names were drawn, rejected and did not place on the venire said names so drawn, but rejected and laid them aside until names came out of

the box of parties resident of Duval county, which drawing was illegal and tended to the prejudice of the defendant; and, upon said venire being returned showing A. K. Leon and Julius Kaufman summoned and Alex. Sabel and Frank Robinson not found, the court ordered that four names be drawn from the box and in said
82 order directed that said four names should be taken from the county of Duval; that the said U. S. marshal and clerk, in obedience to said order, drew from the box more than four names, and where the names were of persons not resident of Duval county rejected and laid them aside and continued drawing until Dennis A. Andreau, Benjamin F. Manier, John L. Marvin, and Samuel Morris were drawn; and so John L. Marvin, John E. Onley, Z. L. Anderson, Charles E. Bell, W. G. Candlish, A. R. Paxon, and Dennis A. Andreau were drawn illegally by said marshal and clerk and not in accordance with the statute of the United States in such case made and provided, which requires that where less than sixteen attend the court shall order the marshal to summon from the body of the district, and not from the bystanders, a sufficient number of persons to complete the grand jury. And so the names of many persons who were duly drawn from the jury-box were not placed upon the venire, but were, in the pursuance of the aforesaid orders, after being drawn from the box, rejected and laid aside by the clerk and marshal drawing the same for the purpose of completing the grand jury from the residents of the county of Duval; and the defendant says that he was entitled to have the said grand jury completed according to law, and the said grand jury, so empanelled and sworn as aforesaid, was not drawn and empaneled in accordance with the statutes of the U. S. providing for the drawing and empaneling of grand juries, but was illegal, and this defendant says that such drawing tended to his injury and prejudice.

Wherefore he prays judgment of the said indictment and that the same may be quashed.

ENOCH W. AGNEW.

Sworn to and subscribed before me Dec'r 17th, 1895.

E. O. LOCKE, *Clerk.*

Endorsed: U. S. *vs.* Enoch W. Agnew. Plea in abatement to
281. Filed Dec. 17th, 1895. E. O. Locke, clerk.

To which a demurrer is filed, viz:

83 In the Circuit Court of the United States for the Southern District of Florida, in the Fifth Judicial Circuit.

UNITED STATES *vs.* ENOCH W. AGNEW.	Indictment for Violation of Section 5209, R. S.

And Frank Clerk, United States attorney for the southern district of Florida, who prosecutes in behalf of the said United States, as to the said plea of the said Enoch W. Agnew by him pleaded herein,

and filed on the seventeenth day of December, A. D. 1895, says that the same and the matters therein contained, in manner and form as the same are therein pleaded and set forth, are not sufficient in law to bar or preclude the United States from prosecuting the said indictment against the said Enoch W. Agnew, and that the said United States are not bound by the law of the land to answer the same; and this the said Frank Clerk, who prosecutes as aforesaid, is ready to verify. Wherefore, for want of sufficient plea in this behalf, the said Frank Clerk, for the United States, prays judgment, and that the said Enoch W. Agnew may be convicted of the premises in the said indictment specified.

FRANK CLARK,
U. S. Attorney.

Now comes the defendant, E. W. Agnew, by E. K. Foster & Gunby & Gibbons, his att'ys, — joins issue on said demurrer.
Dec. 17th, '95.

E. K. FOSTER.
GUNBY & GIBBONS.

Endorsed: # 281. In circuit court United States, so. dist. Fla. United States *vs.* Enoch W. Agnew. Indictment, violation sec. 5209, R. S. Demurrer to defendant's plea and joinder. Filed Dec. 17th, 1895. E. O. Locke, clerk.

84 TUESDAY, *Dec'r 17th*, 1895.

Present: Hon. Jas. W. Locke, district judge.
Ordered that court be opened.
And court is opened by due proclamation.

* * * * * * *

UNITED STATES
vs.
ENOCH W. AGNEW. } # 281. Sec. 5209.

Demurrer to plea in abatement is argued, defendant being present; whereupon it is ordered that the demurrer to the defendant's plea in abatement be sustained; to which order and ruling of the court defendant then and there, by his counsel, excepts; and thereupon defendant, being called upon to plead to said indictment, pleads "not guilty."

* * * * * * *

85 In the Circuit Court of the United States, 5th Judicial Circuit Southern District of Florida, December Term, A. D. 1895.

THE UNITED STATES
vs.
ENOCH W. AGNEW.

Be it remembered that on the trial of this cause the plaintiffs, to maintain the issues on their part, introduced *in* evidence, to wit:
The panel of jurormen being completed, court adjourned until

2.30 p. m., at which time court convened pursuant to said adjournment; at which time one L. H. Mattair, one of the jurymen in said cause, arose and asked the court if he could take notes and jot down any items on paper.

By the COURT: Certainly, you have a right to assist your memory in any way that is consistent with your conscience.

To which the defendnat did object; but the court overruling said objection, the defendant thereby excepted.

And the plaintiff then introduced in evidence a certified and authenticated copy of the organization certificate of the First National Bank of Ocala, which was filed in evidence.

G. C. STAPYLTON was then called as a witness for the plaintiff and, being duly sworn, testified as follows:

Q. Where do you reside?
A. At Ocala.
Q. What business are you engaged in?
A. Am receiver of the First National Bank of Ocala.
Q. (Handing book to witness.) I will ask you to state what book that is.
A. That is the record of the minutes of the First National
86 Bank of Ocala.
Mr. FOSTER: Do you mean it is what you found there as the records, or do you know them to be the records?
A. What I found and what appears to be the records.

Book offered in evidence.

Mr. FOSTER: You don't know that they are the records?
A. Only from such internal evidence——
Q. I am not asking your opinion; I ask, do you of your personal knowledge know that those are the records?
A. No.

Defendant's counsel objects to the introduction of the book at present on the ground that it has not been properly identified.

ALEX. MCINTYRE was then called as a witness for the plaintiff and, being duly sworn, testified as follows, to wit:

Q. Where do you reside?
A. At Ocala, Florida.
Q. What business were you engaged in during the year 1894?
A. I was cashier of the First National Bank of Ocala.
Q. What business were you engaged in in the first part of the year 1895?
A. I was cashier of the same bank.
Q. How late in 1895?
A. Up to June, 1895.
Q. (Handing book to witness.) What is that book?
A. That is the minute book, book of records of the minutes of the First National bank.

Q. The minute book of the directors' meeting of the First
87 National Bank of Ocala?
A. Directors and stockholders' meeting.
Q. Whose handwriting is that record in?
A. Mine.
Q. Do you know personally that that is the minute book of the directors and stockholders' meeting of that bank?
A. Yes, sir.

Book tendered in evidence.

Mr. FOSTER:

Q. Did I understand you to say you were cashier till June, 1895?
A. No; June, 1894; the bank closed in April, 1895.
Q. You said June, 1895.
A. I made a mistake; it was June, 1894.
Q. I just want to ask you if that is in your handwriting (indicating on book)?
88 A. Yes, sir.

Minutes of the first meeting of the newly elected board of directors of the First Nat'l Bank of Ocala read in evidence and filed.

By the COURT: What date?
Mr. CLARK: 9th of January, 1894.

And the plaintiff, to further prove the issue in its behalf, then and there produced and offered as a witness in its behalf one F. L. WILLIAMS, who, being duly sworn, testified as follows, to wit:

Direct examination by Mr. CLARK:

Q. Where do you reside?
A. At Ocala, State of Florida.
Q. Where did you reside last year, 1895?
A. At Ocala, Florida.
Q. What business were you engaged in during the early part of the year 1895?
A. Clerk in the bank, First National Bank of Ocala.
Q. How long had you been employed in that bank?
A. About 2½ years.
Q. When did you quit the service of that bank?
A. I think 19th day of April of last year.
Q. What were your duties as clerk with the First National Bank of Ocala?
A. Collection clerk.
Q. Were you employed in that bank during the month of April, 1895, up to the 19th day of that month?
A. Yes, sir.
Q. (Handing paper to witness.) I will get you to state if
89 you recognize that paper.
A. Yes, sir.

Q. In whose handwriting is that (showing same paper to witness)?
A. That is mine.
Q. You wrote that, did you?
A. Yes, sir.
Q. I desire to ask you, Mr. Williams, how you came to make out that slip of paper?
A. By the instruction of Mr. Agnew.
Q. Which Mr. Agnew?
A. Mr. E. W. Agnew, at that time president of the bank.
Q. The defendant here?
A. Yes, sir.
By the COURT: By instruction or direction, did you say?
A. By instructions.

Slip of paper tendered in evidence by the prosecution.
Defendant's counsel object to the introduction of same as not being connected at all, the purpose for which it is offered not yet being shown.
Mr. FOSTER: It is a deposit slip on account of Mr. Agnew.
By the COURT: It is admitted in evidence. It will be of no importance unless you connect it with this case.
Mr. FOSTER: The instructions which Mr. Agnew gave have not yet been shown and there is no evidence that that paper was carrying out those instructions. We are entitled to know from the Government what thoses instructions were.
By the COURT: You can ascertain that on cross-examination.
Exception noted for defendant.
Deposit slip read and filed in evidence, marked C.

90 Q. Did you write that "Sav." on there?
A. Yes, sir.
Q. What is that?
A. It is intended for Savannah.
Q. What does that mean?
A. It was a check on Savannah.
Q. The "Sav." is an abbreviation of "Savannah"?
A. Yes, sir.
Q. You say that you made that by the instructions of the defendant, Mr. Agnew. Did you have the checks in your hands that you listed upon that deposit slip?
A. No, sir.
Q. State to the jury how he instructed you to make that slip.
A. I was in my cage—separate cages in the bank—the collection department. He came in with a couple of checks in his hand. He asked me to make out a deposit ticket for him. I went outside of my cage, to the exchange clerk's desk, with a pad of deposit tickets in my hand, and asked him — whose account must I credit them, and he said his account. I made out the ticket and he called off the checks to me, held them in his hand and called them off as I put them down.

Q. He called off the two checks as you put them down?
A. Yes, sir.
Q. What did you do with that deposit slip after you finished with it?
A. I tore it off the pad and handed it to him with the checks.
Q. Handed it to the defendant himself?
A. Yes, sir.
Q. As collection clerk, was it part of your duty to make out deposit slips?
A. No, sir.

Q. What connection with the First National Bank of Ocala
91 did Mr. Agnew, the defendant, have at that time, if you know? What relation did he bear to the bank?

A. He was president of the bank at that time.
Q. Mr. Williams, this deposit slip you will notice has the figure 4 and then 1895; what is that 1895?
A. It is the year 1895.
Q. What does that 4 mean?
A. That 4 means the month of April.
Q. Do you remember now what day in April that was?
A. I couldn't say the exact date.
Q. Do you remember about the exact date in April it was?
A. It was between the 12th and the 19th of April, but I don't remember exactly.
Q. You say that you severed your connection with the bank on the 19th of April?
A. Yes, sir.
Q. Why?
A. The bank failed at that time.
Q. Was it closed on that day?
A. It was the day before that day; I don't remember the exact date.
Q. And you severed your connection when the bank was closed?
A. Yes, sir.

Cross-examination.

By Mr. GUNBY:

Q. How long did you say you had been working at the First National bank?
A. I said about 2½ years.
Q. Had you ever before that time made out deposit slips?
A. Yes, sir.

Q. Had you frequently made out deposit slips?
92 A. No, sir.
Q. How often had you done it?

A. I don't know; I very seldom ever did it, because I was in a different department altogether in the bank.
Q. You had, however, at various times before that done it?
A. Yes, sir.
Q. For whom, different people?

A. Yes, different people, and at times, perhaps, be in the teller's cage and take in a deposit for somebody, something like that.

Q. You would occasionally take the place of the teller and take deposits there?

A. Very seldom.

Q. Now was there any special reason for you to remember what Mr. Agnew said to you on that particular date?

A. I remember what he told me about the checks, what to do with them.

Q. What were the checks that he showed you?

A. 2 checks on Savannah.

Q. What do you mean by 2 checks on Savannah? Were they checks drawn by Savannah people on a Savannah bank?

A. I don't know whether they were drawn by Savannah people; they were checks drawn on a Savannah bank.

Q. Do you remember what bank at Savannah?

A. The Merchants' National Bank of Savannah.

Q. The Merchants' National Bank of Savannah, both of them on the Merchants'?

A. I just remember from seeing them; did not handle the checks at all; he just called off to me two checks on Savannah and amount.

Q. If you did not handle them, if they were called off to you and you did not see them, how do you know it was the Merchants' National bank?

93 A. Because I saw the Merchants' National Bank of Savannah at the head of the checks in large letters.

Q. Who were they drawn by?

A. I don't know.

Q. And you don't know the amount of them?

A. Yes, sir.

Q. How much was it?

A. $3,400.00.

Q. In letters or figures?

A. In figures.

Q. You saw it in figures.

A. Yes, sir.

Q. How much was the other one?

A. $5,950.00.

Q. Was that in figures, too?

A. Yes, sir.

Q. You saw that in figures?

A. Yes, sir.

Q. When you made that deposit slip did you know who those checks were payable to, whether payable to Mr. Agnew or somebody else?

A. No, sir; I didn't see who they were payable to.

Q. Do you know whether they were endorsed or not?

A. No, sir; I don't.

Q. Then the only thing you had to do with it was in accordance with Mr. Agnew's instructions to make out the deposit slip?

A. Yes, sir.

Q. Now, is it not a fact that Mr. Agnew came into the bank and handed you these checks at your desk and told you to make out deposit slip, and you did so and handed them back to him?

A. No, sir.

94 Q. Whose desk were you at work at when you took down these deposit slips?

A. When I made out the deposit slip?

Q. Yes, sir.

A. I was at the exchange clerk's desk.

Q. Where was he?

A. That is just in the rear of the bank.

Q. Where was the exchange clerk?

A. I don't know; he was out at the time.

Q. Do you know what became of those checks?

A. No, sir; not after I made out a deposit ticket for them; after I got through with them I went on with my work; I don't know what was done with them.

Q. You do not know what was done with them?

A. I heard tell what was done with them.

By the COURT: No; what you know yourself.

A. I don't know what was done with them.

Q. Did you hear Mr. Agnew—you say he instructed you to make out those deposit slips—were any instructions given by Mr. Agnew, in your presence, as to what should be done with those checks?

A. No, sir.

And the plaintiff, to further prove the issue in its behalf, then and there produced and offered as a witness by recalling ALEX. MCINTYRE, who, having been previously sworn, testified as follows, to wit:

Direct examination by Mr. CLARK:

Q. Do you know the defendant, Enoch W. Agnew?

A. Yes, sir.

Q. What business was he engaged in during April of 1895?

A. President of the First National Bank of Ocala, for one

95 thing.

Q. I will get you to examine that paper and state whether you recognize it or not (handing paper to witness).

A. Yes, sir; I have seen that before.

Paper handed to counsel for examination.

Q. You say you recognize that paper; was it ever in your possession?

A. Yes, sir.

Q. State when.

A. It was in my possession one day in April, 1895.

Q. About what time during the month?

A. About 4 or 5 days before the bank closed; the bank closed, I think, the 19th.

Q. You mean the First National Bank of Ocala?

A. Yes, sir.

Q. How did that come into your possession?

A. It was handed to me by Mr. Agnew, I think; either he or Mr. Massey; I can't swear positively which.

Q. Who was Mr. Massey?

A. He was an employee of the First National Bank of Ocala.

Q. When you say Mr. Agnew do you mean this defendant?

A. Yes, sir; president of the bank.

Q. Do you recognize that as being the paper that was handed you either by the one or the other?

A. Yes, sir.

Q. 4 or 5 days before the close of the bank?

A. Yes, sir.

Q. You say that was on the 19th day of April, 1895?

A. Yes, sir.

Paper tendered in evidence.

Cross-examination.

By Mr. GUNBY:

96 Q. Was this the only check that came into your hands at that time?

A. No, sir; there were two others.

Q. You say they were given to you by Mr. Agnew or by Mr. Massey?

A. Yes, sir; either by Mr. Agnew or Mr. Massey.

Q. What was your position in the bank at that time?

A. I had no connection with it in any way.

Q. At that time?

A. None at all.

Q. For what purpose were they given to you?

A. Given to me to give to the National Bank of the State of Florida, at Jacksonville.

Q. To give to them for what reason?

A. I was to give the three checks to them to take up two certificates of deposit issued by the bank, $5,000 each.

Q. Issued by what bank?

A. First National Bank of Ocala.

Q. The National Bank of the State of Florida then held—how much did the three checks given to you amount to?

A. $10,000.

Q. And at the request of Mr. Agnew you took these checks and paid a certificate of deposit to the Nat'l Bank of the State of Florida held by the National Bank of the State of Florida?

A. Two certificates of deposit, $5,000 each; total of $10,000.

Q. Were those certificates of deposit held by the National Bank of the State of Florida?

A. Yes, sir.

Q. Do you know who the certificates were in favor of?

A. In favor of C. B. Collins.

Q. C. B. Collins, State treasurer?

A. Yes, sir.

97 Q. Did you use this identical check for the purpose of paying off a certificate of indebtedness issued by the First National Bank of Ocala, together with other money?

A. Yes, sir.

Check headed The Merchants' National Bank of Savannah *to* pay to the order of the First Nat'l Bank of Ocala $3,400 in full for 1,700 shares of the Marion Phosphate Co. stock, signed J. Rouer, with endorsements thereon, read in evidence and filed, marked Exhibit D.

And the plaintiff, to further maintain and prove the issues in its behalf, then and there offered as a witness in its behalf one C. D. MASSEY, who, being duly sworn, testified as follows, to wit:

Direct examination by Mr. CLARK:

Q. Where do you live?

A. Ocala, Florida.

Q. What business were you engaged in during the early part of the year 1895?

A. I was an employee of the First National Bank of Ocala.

Q. In what capacity were you employed in that bank?

A. At the time the bank closed I was attending to the discounts.

Q. When did the bank close?

A. It closed on the night of April 19th, 1895.

Q. Do you recognize this check (handing check filed in evidence)?

A. Yes; I do.

Q. Did you ever have that in your possession?

A. Yes, sir; I have.

Q. When did you have it in your possession and from whom did you get it?

A. I think it was on April 16th. I am not positive of the date, but I think that was the date, and I obtained it from Mr. Agnew, the defendant in this case.

98 Q. What position in the bank did Mr. Agnew hold at that time, if any?

A. He was president of the bank.

Q. Why did he give you that check?

A. He gave me this check to send to the National Bank of the State and make endorsement on it.

Q. Look at that endorsement. Did you make that endorsement?

A. I did, except writing Mr. Agnew's name. He wrote that himself.

Q. What did you do with that check after the endorsement was made?

A. I wrote a letter after I endorsed it, and enclosed it in the letter, to the National Bank of the State, and either handed it to Mr. Agnew or Mr. McIntyre; I don't remember which. They were both standing there at the time.

Q. Either handed it to Mr. Alex. McIntyre or Mr. Agnew, the defendant?

A. Yes, sir.

Witness steps down to counsel's table.

Q. Mr. Massey, what book is that?

A. Individual Ledger No. 18, used at the First National bank at the time it closed.——

Q. First National Bank of Ocala?

A. Yes, sir.

Q. What kind of a ledger is that?

A. A ledger that has all of the accounts of the depositors.

Q. Depositors' ledger?

A. Yes, sir; strictly depositors' ledger.

Q. I will get you to turn to the personal account of Mr. E. W. Agnew, the defendant. He had an account with the bank at that time?

Witness turns.

Q. Have you the account of Mr. E. W. Agnew, the defendant?

A. Yes, sir.

Q. I will get you to turn to the 15th day of April, 1895,
99 and state whether or not there are any credits to his account as of that date.

Witness turns.

Question objected to by defendant on the ground that he has offered in evidence the book that purports —, and from the testimony of the witness is, the individual ledger of depositors of the First Nat'l bank and has *in*identified it as that book. He is now asked to turn to that book for the purpose of proving that there appears upon it certain entries. There is no evidence he kept that book, that he was familiar with the keeping of it, and the book itself is not offered in evidence—nothing showing that it is the original book of entry or that he kept it.

Mr. CLARK: I now offer the account of Mr. E. W. Agnew, not what this witness states it contains, but this book itself. I offer this book now, in so far as it shows anything of the account of Mr. E. W. Agnew, the defendant, with the bank.

Defendant, by his counsel, renews his objection to same.

By the COURT: Is the witness now on the stand the one that kept that book? Can he swear positively——

Mr. CLARK: He swears that this is the book.

Q. How long have you been employed in that bank?

A. About five years.

Q. Do you know of your own knowledge what book that is?

A. Yes, sir.

Q. What book is it?

A. It is the individual ledger of the First National Bank of Ocala, which kept all of the accounts in alphabetical order, from A to M of that bank, of depositors.

Q. The accounts of depositors with the bank, parties who deposited money there?

100 A. Yes, sir.

Q. And that book shows all those accounts?

A. Yes, sir; that book shows all those accounts.
Q. You know of your own knowledge that that is the depositors' account?
A. Yes, sir; from A to L.
Q. From A to L, inclusive?
A. Yes, sir; both inclusive.
Q. Is that the only book in which the depositors' accounts were kept at that time—from A to L, inclusive?
A. Yes, sir.

Book is again offered in evidence.
Objection to its introduction renewed by defendant.
By the COURT: I think I will permit the party to testify as to that book and let it go in evidence.

By the COURT: You testified that of your own personal knowledge you know that to be the individual ledger?
A. I did.
Mr. FOSTER: Do you know of your own knowledge that these entries in that book on the particular day were made from the deposit slips—of your own knowledge?
A. I didn't make them nor I did not see them made, but I know they are made every day since the bank was organized.
Q. I mean that particular day?
A. It was the custom to enter in that book every day the deposits of individuals, according to their deposit slips.
Q. You didn't make them yourself?
A. I did not make them nor I didn't see them made.

The defendant, through counsel, objects to the introduction in evidence of the book which is testified by the witness to be
101 the individual ledger of the First Nat'l Bank of Ocala, in which depositors' individual accounts are kept from A to L, inclusive, the witness testifying that he did not make the entries in the book nor see them made, but that it was customary every day to enter in that book the deposits of individuals, according to their deposit slips, the entries being taken from the slips.
By the COURT: I think if there is better evidence on that point we had better take time to get it. I will not permit the witness to testify to entries that are not made by himself.
Exception withdrawn on this understanding.

Mr. CLARK:

Q. Mr. Massey, do you know J. K. McDonald?
A. Yes, sir; I do.
Q. After this bank was closed, you say on the night of the 19th of April, 1895, who took charge of it?
A. Mr. J. K. McDonald took charge of it on the 22d, I believe.
Q. Do you know anything about stocks, bonds, and other securities—if any were held by the First National Bank of Ocala at that time?

A. Yes, sir; I knew — they had on hand, or what was their assets at the time.

Q. I will ask you to state to the jury if you heard any conversation, shortly after Mr. McDonald took possession of the bank, between Mr. McDonald and Mr. Agnew, the defendant, relative to certain shares of the Marion Phosphate Co. stock.

A. Yes, sir; I heard a conversation, but I could not repeat it verbatim.

Q. Can you tell the substance of this conversation?

A. Well, yes; I think I can.

Q. I will get you to state what that conversation was.

102 Mr. FOSTER: Did you hear the whole of it?

A. I don't know whether I heard all of it or not. I heard part of it. I don't know how much there was.

Defendant, through his counsel, objects to the witness stating what the conversation was as irrelevant and not the proper way to prove the conversation.

Objection sustained.

Cross-examination:

Q. Were you in the bank, and do you remember the circumstances of the bringing in of the two checks on the Merchants' Bank of Savannah by Mr. Agnew?

A. Do I remember the circumstance of bringing them in?

A. Yes, sir.

A. I don't know that there were any circumstances of bringing them into the bank.

Q. Who brought them there?

A. I don't know who brought them there.

Q. Where did you first see them?

A. In Mr. Agnew's possession.

Q. Do you know what he did with them?

A. Yes, sir; I know what he did with them.

Q. Of your own knowledge?

A. Yes, sir.

Q. What was it?

A. He handed them to me and instructed me to endorse them and write a letter to the national bank of the State, asking them to accept those with another check which I wrote out on New York bank, and the three amounted to $10,000, to take up two certificates of deposit that were held by the National Bank of the State for collection on the First National Bank of Ocala, and I handed

103 the letter either to Mr. Agnew or Mr. McIntyre, I don't know which, and Mr. McIntyre came to Jacksonville and took up those two certificates of deposit.

Q. Then, those two checks which you speak of, together with another check which you drew, were actually used to pay this indebtedness of the First National Bank of Ocala, were they not?

A. Yes, sir; it was.

Q. What kind of indebtedness was it that these checks went to

pay? What is a certificate of deposit? I ask for an explanation with regard to it.

A. It is the bank's obligation, stating you have deposited so much money in the bank, payable to your order.

Q. It is equivalent, then, to a deposit with the State of Florida, payable to the treasurer?

A. Yes, sir, originally, and he endorsed it to the national bank of the State.

Q. For collection; simply a deposit account, then, like any other, except it was——

A. Like any other deposit, except not payable to check.

Q. Payable on presentation of original certificate?

A. Yes, sir.

Q. Now, do you know anything about the entry of those checks—any entries of those checks—prior to the time they were put in your hands to draw that endorsement?

A. Do I know——

Q. Did you see Mr. Agnew do anything with those checks before he handed them to you?

A. I don't know that I saw him do anything with them, except that I understood from Mr. Agnew that Mr. Williams had made the necessary credit for the checks.

Q. He simply told you Mr. Williams had made the neces-
104 sary credits, and you wrote the letter?

A. Yes, sir; that is the substance of it.

Q. And the other checks that were enclosed with the $3,400 check made up the $10,000 to pay a debt of the First National Bank of Ocala and did pay it?

A. Yes, sir.

Q. Did you receive the certificates when they came back?

A. No, sir; I did not.

Q. Do you know whether they came or not?

A. Yes; I know they came back.

Q. The certificates came back and were cancelled?

A. Yes, sir; and were cancelled.

And the plaintiff, to further prove the issue in its behalf, then and there produced and offered as a witness in its behalf one C. J. HUBER, who, being duly sworn, testified as follows, to wit:

Direct examination by Mr. CLARK:

Q. Where do you reside?

A. In Tampa at present.

Q. Where did you reside in the early part of the year 1895?

A. In Ocala, Florida.

Q. How long had you resided there?

A. About six years.

Q. What business were you engaged in at Ocala during the early part of 1895?

A. I was in the banking business. I was a clerk in the bank, the First National Bank of Ocala.

Q. Who was president of that bank at the time you were employed there?

105 A. Mr. Agnew, the defendant here.

Q. How late in 1895 were you in the employ of that bank?

A. I was in the employ of the bank up to the time of its suspension.

Q. When was that?

A. About the 18th or 19th of April. I don't remember the date exactly.

Q. What position did you hold in that bank in April, 1895?

A. April, 1895, I was the general book-keeper.

Q. I will get you to take that book and state to the jury if you know what book that is (handing book to witness).

A. This is a general ledger.

Q. What general ledger?

A. General ledger of the First National Bank of Ocala.

Q. What is kept in that general ledger?

A. All the general accounts.

Q. Explain what you mean by general accounts.

A. The bills receivable, stock, securities.

Q. What are bills receivable; what do you mean by that?

A. Bills receivable—that is an account of all the notes that were made payable to the bank or represented money lent out.

Q. What else was kept in that book?

A. Stock, securities.

Q. Stocks and bonds account?

A. Yes, sir.

Q. Explain to the jury what you mean by stocks and bonds account as kept in that book.

A. The account of stocks and bonds as kept in this book—stocks and bonds that have been purchased by the bank.

Q. Owned by the bank?

A. Yes, sir; bank stock.

106 Q. Who kept that book?

A. I kept it in 1895.

Q. I will get you to turn to the stocks and bonds account in that book; I will get you to state if the First National Bank of Ocala owned any of the stock of the Marion Phosphate Co. at that time, in April, 1895.

Defendant's counsel objects to the introduction of the book in evidence.

Mr. GUNBY: I would like to ask him whether or not that is the only book of original entry, the book where the transaction first appeared when it was made, or was this a copy; what kind of a ledger; whether you transcribed it from something else.

A. This is not the original entry of the transaction.

Defendant renews his objection to the introduction of the book, because it is not the book of original entries.

Mr. CLARK: I am not offering the book yet. The witness has a

right to take this book or any memoranda and refresh his memory as to that fact.

By the COURT: I don't understand that the book is offered yet.

Mr. CLARK:

Q. I will get you to state if you know whether the National Bank of Ocala in 1895 owned any stock of the Marion Phosphate Co.

A. Yes, sir.

Q. Do you know how many shares?

A. I can look at the book and tell.

Q. You can refresh your memory by looking at the book or any other memoranda you desire; you can then testify from memory.

A. One certificate, I believe; 1,700 shares.

Q. Did the First National Bank of Ocala own any other
107 shares of the Marion Phosphate Co. stock other than 1,700 shares?

A. No, sir; not that I know of.

Q. Would you know if they did?

A. At that time if they would have owned it it would have shown up on these records.

Q. What is the book of original entry in that bank as to the stocks and bonds account?

A. The entry on this ledger has been transferred from another ledger that was used up.

Q. That was used up?

A. Yes, sir; the other ledger; this ledger was opened in 1893; this entry was simply transferred from the other ledger, and the posting in the ledger is usually made from the cash book, and the original entry is made right on the cash book; that would show the transaction.

Q. Are all those items you hold there taken from the other book?

A. Yes, sir.

Q. The cash book or the book used up?

A. The stocks and bonds account was transferred from the other ledger.

Q. You say that this book, or the entry there, so far as it refers to the Marion Phosphate Co. stock, was copied from an old ledger that was used up?

A. Yes, sir; I think it was; quite sure it was.

Mr. FOSTER: Did you make that transfer?

A. No, sir; I didn't make this transfer.

Q. Who did make it?

A. Mr. Mayo made this.

Mr. CLARK: Just lay that book down. I will get you to state what this is (handing another book to witness).

108 A. This is the cash book.

Q. Now, is that the book of original entry, so far as the stocks, securities, and bonds owned by the bank are concerned?

A. Yes, sir; this is the book that any transaction of that kind would first be entered up on from the slips.

Q. Now, I will ask you if you kept that book.

A. Yes, sir.
Q. Is that in your handwriting? - -
A. Yes, sir.
Q. Is there an item there referring to the Marion Phosphate Co. stock? Have you found it?
A. Yes, sir.
Mr. FOSTER: Is that entry in your handwriting?
A. Yes, sir.

Book offered in evidence as the original book.

Mr. FOSTER: I would like to enquire how that entry is made. How did you get your facts and information for that entry?
A. This is taken from slips, what were called debit and credit tickets.
Q. How were those entries made—those slips were made by whom and how?
A. They were usually made by the cashier or teller at the window.
Q. Then, if the national bank purchased stock, the fact that they purchased it is put on a slip of paper and from that they enter it in that book?
A. Filed and then handed—the custom was whenever a transaction of that kind was made the entry was made on either a debit or credit ticket. They were filed and handed to the general bookkeeper in the afternoon to make the entries there in the books.
109 Q. Were those debit or credit tickets kept or destroyed?
A. They were usually kept.
Q. Then that from which you made that entry is in the possession of the bank, or should be, now?
A. Yes, sir; I think so.

Defendant's counsel objects to the introduction of the book as not being the best evidence; which objection the court did overrule, holding that it was the book of original entry; to which decision the defendant did then and there except, and same was noted for defendant.

Mr. CLARK:

Q. I will get you to turn to that again, Mr. Huber. I will ask you to read the entry referring to the Marion Phosphate Co.'s stock.
A. Stocks and securities debited to Marion Phosphate Co.'s stock, with J. A. Harris's name just opposite.
Q. What is the balance of it?
A. $5,000.
Q. Now, what does that entry mean? Explain it, if you know.
A. As it appears on the book?
Q. Yes.
A. It would mean that the bank had purchased stock, Marion Phosphate stock, to the amount of $5,000.
Q. That is what it means there?
A. Yes, sir.
Q. Do you know what stock that was—how many shares?

A. I don't know. I presume——

Mr. FOSTER: Don't presume only what you know.

A. I really did not see the stock at that time; it was not in my possession. I had never had hold of the stock until I became general book-keeper, in 1895. Then, at that time, in 1893, I was teller.

110 Q. Did you find some stock, then, when you took possession of the books?

A. Yes, sir.

Q. How many shares of the Marion Phosphate Co.'s stock did you find among the assets of the bank?

A. As I remember, there was 1,700 shares.

Q. Were there any more than that?

A. No, sir; I didn't see any more than that—just one certificate.

Q. Do you know what became of that 1,700 shares of stock?

A. I heard that it was sold——

By the COURT: Do you know of your own knowledge?

Mr. CLARK: Do you know or did you get any information from the defendant as to what became of it?

A. No, sir.

Q. I will get you to turn to the proper record, if you have it, and state to the jury whether or not the bank has ever received credit for the amount of the sale of that 1,700 shares of phosphate stock.

A. No, sir; it does not show it on the books.

By the COURT: You mean to say the books do not show that this was sold?

A. Yes, sir.

Mr. CLARK: The book I refer to is "cash book," page 28, entries.

Mr. CLARK: Mr. Huber, I will ask you to state what book this is (handing another book to witness).

A. This is cash book of the First National Bank of Ocala.

Q. What period does it cover?

A. The book was opened on the 18th day of April, 1895.

Q. This one (pointing to another book), what is this?

A. That is a cash book of the First National Bank of Ocala.

Q. What period of time does that cash book cover?

111 A. From May 22d, 1894, to April 17th, 1895.

Q. Who kept that cash book in 1895?

A. I did this work—part of it; Mr. Mayo kept it for part of the time.

Q. I will get you to turn to the stock and bonds account, April 15th, 1895. (Witness turns.)

Mr. GUNBY: Did you keep that book at that time, April 15th, 1895?

A. Yes, sir.

Mr. CLARK:

Q. Are you to the account now of that date?

A. Yes, sir.

Q. What I want to ask you is, does that record show that on

April 15th, 1895, stock and bonds account was credited with $3,400 on account of sales of the Marion Phosphate Co. stock?

A. No, sir; I don't see any entry here.

Q. Now, look at April 16th, 1895, and I will ask you if the account shows that on that date stocks and bonds account was credited with $3,400 on account of the sale of Marion Phosphate Co.'s stock.

A. It does not.

Q. Look at the account of April 17th, 1895. I will ask you now if the account shows that on that date stocks & bonds account was credited with $3,400 on account of sales of Marion Phosphate Co. stock.

A. No, sir.

Q. April 18th? (Witness turns.)

A. It does not show any such transaction.

Q. Look at April 19th and state whether or not it shows credited on that date $3,400.

A. No, sir.

Q. The bank was closed on April 19th?

A. Yes, sir.

112 Cross-examination by Mr. GUNBY:

Q. In testifying to the entries upon these books with reference to the ownership of stock by the First National Bank of Ocala, have you testified from your own knowledge of the transaction at the time it occurred or from what you find upon the books in your own handwriting?

A. All I could do is to testify from the record. I know nothing at all of the facts of the transaction.

Q. Then, in the use of the books which have been shown to you, you have used them, not for the purpose of refreshing your memory, because you have no memory of the transaction at all, except as the books show it, have you?

A. I have no memory at all about the transaction except as the——

Q. As the books themselves disclose it to you?

A. Yes, sir.

Q. Then the disclosure that was made to you as to the ownership of that stock, and as those books show it, was made by yourself, were they not?

A. The entries?

Q. Yes; you testified you made those entries yourself from another book?

A. I made the original entry in the cash book from slips.

Q. And you do not know anything about whether the slips were correct or not? You didn't make the slips, did you?

A. No, sir.

Q. And you know nothing of your own individual knowledge as to the character of the transaction?

A. I don't know anything at all about the transaction.

Q. And when you testify to anything from this book you testify from the record which you made yourself?

113 A. Yes, sir.

Q. And that record was made from the original entry made by somebody else?

A. From debit or credit slips.

Redirect examination:

Q. Counsel asks you if they were made as copies of original entries made by somebody else. Do you mean from an original entry made by somebody else in another book or simply these entries on these deposit slips?

A. The cash book is the original book or entry. Those charges and credits made on the cash book were made up altogether from debit and credit slips. I made the original entry on the cash book.

Q. That is the original entry?

A. That is the book of original entry.

Q. Do you know what became of the 1,700 shares of Marion Phosphate Co. stock that you testified about of your own knowledge?

A. I understood it was sold——

Objected to.

A. I have no direct knowledge.

Q. You were the keeper of that certificate of stock, were you not?

A. Yes, sir; I had it in my possession.

Q. Who got it from you, if anybody did?

A. I delivered it to Mr. Agnew, the defendant.

Q. Did Mr. Agnew state to you at that time what he wanted with it?

A. No, sir.

Q. Did he state to you anything in reference to its sale?

A. No, sir.

Q. Have you seen that certificate of stock since the time that you delivered it to this defendant?

A. I have not.

114 Q. Do you remember about when you delivered it to him?

A. I don't remember exactly; I think it was about two or three weeks before the bank closed.

Q. Was it in the month of April?

A. I could not say positively whether it was or not; I think it was about two or three weeks before the bank closed.

Defendant through his counsel moves to strike all of the testimony of the witness with reference to the cash book, and the entries thereon made by him, from the evidence as irrelevant and improper, in that it is not the best evidence of the facts intended to be proved, he having stated that all the transactions were made by somebody else, who made proper memoranda of them at the time on slips which were filed in the bank and were kept as records of the bank; that this motion is not made for the purpose of arguing it, but for the

purpose of getting the record clear as to the admissibility of that testimony.

Which said motion the court denied and overruled and refused to strike out; to which decision and ruling the defendant excepted.

J. K. McDONALD was then called as a witness by the plaintiff and, having been duly sworn, testified as follows:

Q. Are you acquainted with the defendant, Enoch W. Agnew?

A. Yes, sir.

Q. I will get you state what position, if any, you held under the Government of the United States in the early part of 1895.

A. I was national bank examiner.

Q. I will get you to state if at any time during the spring of that year you had any connection in a business way with the First National Bank of Ocala.

A. Yes, sir; I was receiver. I was ordered there by the
115 Comptroller of the Currency, to take charge of the bank, on the day of its suspension. I was ordered on the 20th of April, 1895, to go to the bank as national bank examiner, but on the 22d of April was appointed by the comptroller as receiver.

Q. And you took charge as receiver?

A. Yes, sir.

Q. Did you, as receiver, investigate into the assets of the bank immediately?

A. Yes, sir.

Q. I will get you to state if you had any conversation with this defendant in reference to certain shares of the Marion Phosphate Co.'s stock.

A. The conversation grew out of the fact that in checking up the list of the stocks and securities this particular stock was not handed to me; it was missing. I then asked Mr. Massey, who handed me the other stocks and securities, what had become of this particular certificate, representing 1,700 shares of the Marion Phosphate Co. stock. He said he didn't know, and I called Mr. E. W. Agnew, the defendant. Mr. Agnew told me he did not know where the stock was, and, after some little talk, later said that Mr. Huber was the custodian of the stock, and that Huber had had the stock in his possession several days prior to that date, and that Mr. Huber could tell me where the stock was.

Q. He said that he did not know where the stock was?

A. He said it was in the safe; told Mr. Massey that it was certainly in the safe, and that he had only to look for it to get it; but when we demonstrated it was not there he said he knew Mr. Huber had had it in his possession only a few days before; Mr. Huber could tell me what was done with it.

Q. Did he say anything to you during that conversation in relation to the sale of that stock?

116 A. No, sir.

Question objected as leading.

By the COURT: He has answered it.

Q. How much experience have you had in the banking business as a national bank examiner?

A. Nearly three years.

Q. Had you had any banking experience previous to that time?

A. Yes, sir; was employed in a large bank at Montgomery, Alabama, about fourteen years.

Q. I will ask you, Mr. McDonald, if a bank held certain securities as its own property and those securities were sold for a given sum, when the check came into the bank in payment of those securities what would be the proper entry to be made?

A. The proper entry would be to credit the account on which those securities were carried in the ledger; in this case the account was designated as "stocks and securities," and in that case the entry should have been credit stocks and securities account proceeds of this stock so much money.

Q. Of the sale?

A. Yes, sir; for the amount of money received for the stock.

Q. And that entry would be made upon the stocks and securities account?

A. Yes, sir; it would be carried to the stocks and securities account in the ledger.

Cross-examination:

Q. If stocks and securities were sold, owned by a bank, and a check was received from a foreign bank in payment of them, would the entry of payment be made before the check was collected or afterwards?

A. In all cases before the check was collected.

Q. It should be made in all cases before the check was collected?

117 A. Yes, sir.

Q. What would be the result in such case should the account be credited as paid and the check dishonored when presented to the makers?

A. The result would be that the stocks and securities account sho-ld be credited back with the amount and the amount charged up to losses, profit and loss account, if the check was worthless.

Q. And the securities returned?

A. That would depend on circumstances, whether you could get the securities back——

Q. Your method of book-keeping, then, under those circumstances would depend on the particular situation at the time?

A. The particular circumstances at the time.

Q. But by your method of book-keeping, when the check came into your possession in payment of the stock, you would credit the account with it before it was collected?

A. Certainly, in every case where the check was received as certified by a reputable bank.

Q. Then your answer to that question, Mr. McDonald, is based

upon the fact that you know of your own information and examination as receiver of that bank that this check was certified by a bank?

A. No, sir; my answer is not based upon that knowledge; it is based upon practice.

Q. At the same time you had that knowledge, had you not?

A. I have that knowledge—yes, sir—now.

Q. Would your action be any different whether the check was certified at all or not?

A. No, sir.

Q. You would credit it anyhow?

A. Yes, sir; would credit it anyhow.

Q. Why was it that you laid particular stress upon the fact
118 you would do it, particularly if it was certified by a reputable bank?

A. The only reason for it was, I suppose, in your former question you implied a doubt as to whether the transaction would be completed upon the books in all cases, and that implication as much as the knowledge—I do not care to say the knowledge that that check was certified was not in my mind at the time, but in conclusion I know it was; that if the bank is satisfied that a check received for any account, no matter what, is good, that check is passed up to the credit of its proper account at once.

By the COURT: The court will take an adjournment to ten o'clock. Gentlemen of the jury, I will say, in the matter of permitting the jury to take such notes as they see fit, I do not desire or consent that those notes shall in any way control the mind of any other juror at all; it is simply for his own personal convenience; and, gentlemen, I want you to understand that your memory and recollection of the testimony is to be the controlling element in enabling you to arrive at a just verdict in this case, and in permitting the juror to take such notes as he may see fit I do not desire the jury to understand that those notes are at all in any way to influence you in the least. I thought I would call your attention to this fact.

Court then adjourns to 10 a. m.

Court convened Saturday a. m., at ten o'clock, pursuant to adjournment.

J. K. MCDONALD was recalled as a witness by the plaintiff and testified as follows:

Direct examination by Mr. CLARK:

Q. In reference to the customs of banks when a deposit
119 slip is made out and filed, what becomes of that slip then?

To which question the defendant did object upon the ground that the man who kept these books himself in this particular bank has testified positively that in this bank these slips were kept as a record of the bank and filed.

By the COURT: You refer to Mr. Huber?

Mr. GUNBY: Yes, sir.

By the COURT: He has not testified fully; I think he used a questionable or equivocal answer. He presumed they were kept, and I do not think it appears he was the custodian of those slips. I think he testified they were usually kept, and he supposed they were in the bank. You may answer the question.

The court having overruled the objection and allowed the witness to answer the question, the defendant did except thereto.

A. The custom is that they are filed away in their regular order, according to dates, and preserved carefully; usually kept in the vault or safe place.

Q. Is there any record or entry made of them before being filed away?

A. No record, except they are entered in the book of original entry, and in most cases under the system that is now used for individual deposit——

Defendant's counsel objects to what the system now is; it is what the system was at that time.

A. The system in this bank then, the system used in this bank—the ledger was the book of original entry—the depositors' ledger. The slips were made out, and by the individual book-keeper
120 were entered in the depositors' ledger.

Q. Then they were filed away and kept?

A. They were filed away; yes, sir.

Q. You testified yesterday in reference to a conversation that you had with Mr. Agnew, the defendant. I will ask you if you had any conversation with him relative to this check for $3,400 item subsequent to the conversation you detailed yesterday.

A. Yes, sir.

Mr. FOSTER: Please lay the predicate as to when and where it occurred.

Mr. CLARK: You can state when it was and where.

A. I cannot state exactly when it was.

Q. How long after you took charge of the bank?

A. Probably several days—3 or 4 days after I took charge of the bank the first conversation after the one mentioned yesterday took place.

Q. Three or four days after you took charge of the bank, and I believe you testified yesterday you took charge on the 22d of April?

A. Yes, sir.

Q. Where were you when you had this conversation with him?

A. In the bank.

Q. Was any one present besides yourself and Mr. Agnew?

A. No, sir.

Q. Now, will you state what that conversation was?

A. I cannot state positively in so many words, but I can give the substance of it. Mr. Agnew had that day admitted that he had done wrong; told me he had done wrong in having the $3,400 check——

Mr. FOSTER: One moment. It is for the court to determine on what Mr. Agnew said, whether it was an admission or not.

121 By the COURT: Yes; what did Mr. Agnew say?

A. I spoke to him about the entry of the $3,400 check and told him he ought to pay the money to me at once. He said he would pay the money tomorrow, as well as I can recollect, or within a few days, I am sure, and that he knew that that was wrong, and that he would pay the money up right away.

Mr. CLARK:

Q. (Counsel takes up papers filed in evidence.) I will ask you if that conversation referred to the $3,400 represented on that deposit slip (handing paper to witness).

A. Yes, sir; it referred to the $3,400 received by the bank in payment for these 1,700 shares of Marion Phosphate Co. stock.

Q. I will ask you to state to the jury what you found in reference to the disposition of the 1,700 shares of Marion Phosphate Co.'s stock upon your investigation of the bank's books and papers.

A. I found the stock had been sold for $3,400——

To which testimony defendant objects upon the ground that witness should produce the books and show them as he found it. To cross on it the defendant would have to see how he arrived at it.

By the COURT: He can state how he arrived at it and how he knows it; he can state what evidence of it he found. To enable the jury to understand fully, he can state at the same time how he knows this; he can state his conclusion, and at the same time he can state how he arrived at it.

The court having overruled the objection and allowed witness to testify, the defendant did except thereto.

Mr. CLARK: You can state.

A. The first intimation I had that the bank had sold the stock was conveyed to my mind by the fact that the certificate
122 representing the stock could not be produced by the officer in whose custody it was. I then got information from some of the employees——

To which testimony the defendant did object on the ground that if the results were founded partly on what persons told him he cannot testify before this jury as to the result.

By the COURT: If from the statement made to him he followed out and found positive evidence of that, he can state.

Mr. FOSTER (referring to book): This court holds that if the result of investigation were partly from the books and partly what he heard it must be withheld from the jury, all except what comes from the books themselves.

By the COURT: Well, go ahead.

The court having overruled the objection and allowed the witness to testify, the defendant did except thereto.

A. I of course went to work making investigation which would enable me to determine what had become of that certificate of stock. It was carried on the books at $5,000, and it was my duty to investigate so far as would enable me to determine—to locate the present

whereabouts of that stock or to determine what had become of it, so in the course of my investigations I examined the books for some time back, and in making inquiries as to different items on the book I learned that this stock had been sold at $2 a share, or $3,400. I found in examining the ledger a $3,400 entry—that is, in examining the deposit slips, a $3,400 entry on that particular day—and I then investigated and learned that this check had been received on that day, had been forwarded on that day, and that there was no other credit for $3,400 on that day in the books of the bank, and in that way I determined from the books that this $3,400 credit must have been made up from the check on Savannah.

Q. The check has been introduced in evidence here?

A. Yes, sir.

123 Q. Did you find from your investigation of the books and papers of that bank any other deposit slip showing an item of $3,400 to the credit of E. W. Agnew of that date?

A. No, sir; and I examined all the deposit slips of that date; that was the only $3,400 entry to the credit of any person or any other account.

Mr. FOSTER: You mean on that date?

A. Yes, sir; on that day.

Mr. CLARK:

Q. Where did you find that item of $3,400 credited on the books of the bank—to whose account?

A. Mr. E. W. Agnew, the president.

Q. In this conversation that you had with him, please state to the jury why you had that conversation, how it came about.

A. It was the result of my investigation and the conviction I had formed that this particular $3,400 had been placed to his credit instead of being placed to the credit of stocks and bonds.

&. Should it have been placed to the credit of stocks and bonds?

A. Stocks & securities; yes, sir. When I learned positively that the $3,400 had been placed to Mr. Agnew's account I asked him to go into the back room with me and I told him what I had learned and the conversation was the result.

Q. The conversation that you detailed a while ago?

A. Yes, sir.

Q. Did you have any conversation with him? You say you found that these 1,700 shares of stock of the Marion Phosphate Co. were not in the vaults?

A. Yes, sir.

Q. Did you make any search for those shares of stock?

124 A. Yes, sir; one of the employees got out the papers in the co-partment of the safe in which papers were kept, and he and I examined the whole lot to find this certificate of stock, but failed to find it.

Q. Did you have any conversation with the defendant as to the whereabouts of that certificate of stock?

A. Yes, sir; I asked him at the time where it was, saying that it was missing; it was not with the other stocks and securities.

Q. What did he say?

A. He said that it must be there; he knew it was there; that he had seen it only a few days before; a short time before.

Q. Was that conversation after the 22d of April, when you took charge of the bank?

A. That one you are mentioning just now was on the 22d.

Cross-examination by Mr. GUNBY:

Q. How long after you went to the bank—you say you took charge of it on the 20th?

A. 22d.

Q. You immediately began to make an inventory of its assets, did you not?

A. Yes, sir.

Q. To find out in your official capacity how much money and securities were there?

A. Yes, sir.

Q. Did Mr. Agnew, the defendant, assist you in that investigation; was he present during the making of it?

A. He was present in the bank.

Q. Was he giving you information and aiding in making that investigation?

A. Yes, sir.

125 Q. What was his condition at that time; was he seemingly in fair business capacity, or was he nervous, excited, seemingly worried?

A. He was worried.

Q. Was he excited and much worried by the business troubles he was in; seem to be?

A. He seemed to be very greatly worried, but I didn't notice he was particularly excited, nervous, anything like that.

Q. This conversation you had with reference to those bonds was that very day, the 22d?

A. Yes, sir; I first counted the cash, took charge of that, and then called for the stocks and securities. I suppose it must have been within an hour after I took charge of the bank that this conversation occurred.

J. K. MCDONALD was then recalled as a witness by the plaintiff and testified as follows:

Direct examination by Mr. CLARK:

Q. I will get you to state to the jury in what condition you found the personal account of Enoch W. Agnew with the First National Bank of Ocala from your investigation of the books and papers of the bank.

To which question the defendant did object upon the ground that the books are the best evidence.

By the COURT: I understand you to state that you made a careful examination of these books and accounts?

A. Yes, sir.

By the COURT: And you are thoroughly conversant with these books and accounts?

A. Yes, sir.

By the COURT: You can state what the result was, and the defendant has the right to cross-examine.

The court having overruled the objection and allowed the
126 witness to answer the question, the defendant to said decision did then except.

By the COURT: What was the condition of Mr. Agnew's account?

A. It was overdrawn over $7,000 when I took charge of the books.

Mr. CLARK:

Q. You say his account was overdrawn something over $7,000 when you took charge of the bank?

A. Yes, sir.

Q. Explain what you mean by overdrawn.

A. That is, that he had drawn so much more than he had at his credit; he had checked out so much more money than he had at his credit.

Q. He had checked out so much more than he had in the bank?

A. Yes, sir.

Q. Then would he be a debtor to the bank for that amount?

A. Yes, sir.

BENNETT F. MAYO was then called as a witness for the plaintiff and, after being duly sworn, testified as follows:

Direct examination by Mr. CLARK:

Q. Where do you reside?

A. Jacksonville.

Q. Where did you reside in the early part of 1895?

A. In Ocala, State of Florida.

Q. What business were you engaged in at Ocala?

A. Teller of the First National Bank of Ocala.

Q. Who was the president of that bank?

A. E. W. Agnew, the defendant here.

Q. How long had you been engaged in that bank?

A. Up to the time they closed—just about a year at the time of the closing.

127 Q. When did it close?

A. On the 20th of April, 1895.

Q. You say that you were teller of that bank?

A. Yes, sir.

Q. What were your duties as teller of the bank?

A. To receive deposits and pay checks.

Q. I will get you to look at this paper. Do you recognize that paper (handing paper to witness)?
A. Yes, sir; that is my handwriting.

Counsel examines same.

Q. I will get you to state what this is.
A. That is a charge ticket.
Q. What do you mean by a charge ticket?
A. It takes the same place as a check.
Q. Those items, then, are items of indebtedness against the party named there?
A. Yes, sir; that is right.
Q. And you prepared this paper, you say?
A. Yes, sir.
Q. Why did you prepare this?
A. Those items there are items of indebtedness against Mr. Agnew, and they were carried as so much cash in the cash items. In order to get those out of the cash item it was necessary to make that charge, which takes the place of a check, and give to the individual book-keeper and he charged it up on the ledger?
Q. And you made this for the purpose of having it charged up to Mr. Agnew's account?
A. Yes, sir.

Charge ticket offered in evidence, and defendant's counsel object to the introduction of same in evidence on the ground that it is irrelevant.

128 By the COURT: I think he should show more particularly the foundation of those charges.

Mr. CLARK:

Q. Where were those charges, these different items?
A. Carried in what we call cash items.
Q. Will you please explain to the jury what you mean by "carried in what you call cash items"?
A. It is items that cannot be disposed of on the books. For instance, if we should happen to cash a man's check for a certain amount and he has not the amount of money to his credit, we are not supposed to charge that check up and have the account overdrawn, but we make a slip of that we carry in the cash item until we make some disposition, until he may make his account good for that amount.
Q. State the course pursued in reference to these items.
A. Same thing.

By the COURT: You may explain in reference to any particular one.
Mr. CLARK: Take, for instance, Bradley, $5,130.45. What does that represent?
A. I don't remember the circumstances connected with that particular item, but it must have been——

Defendant did object to witness stating what it must have been; which objection being overruled, the defendant did to said decision except.

A. The best of my recollection, I would say——

By the COURT: That is, judgeing from your regular course of making it?

A. It must have been a note—Mr. Agnew's—paid by the First National Bank of Ocala, and his account was not sufficient to cover that and it was carried in the cash item until his account was good for it.

129 By the COURT: How was it entered in the name of Bradley? Why would it be entered in the name of Bradley?

A. That was just a memorandum I put down on that slip.

Mr. CLARK: Was it a note to Bradley?

A. I can't remember the particulars about it to save my life; but I think it must have been a note that Mr. Agnew owed Bradley and the bank paid it for him.

By the COURT: He can state from his regular manner of performing his duties there as to making that slip.

Defendant did object to the admissibility of the testimony and the ruling of the court permitting it to go in; but the court overruled said objection; to which decision the defendant did except.

By the COURT: The party may state distinctly; he can use that to refresh his memory, if he swears positively that that slip was made up from the cash items in his possession at that time, which were in the regular course of business—of his banking business—chargeable to Mr. Agnew—that that slip was made up from them—he can use that to refresh his memory. I don't hold that this can go in evidence. I have not admitted that yet.

Mr. CLARK:

Q. Were these items—was this paper made by you in the regular course of business and in the regular line of your duties as teller of that bank?

A. Yes, sir; that's exactly right.

By the COURT: And these items, every one of them, were found as cash items against Mr. Agnew?

A. Yes, sir.

Mr. CLARK:

Q. How long had they been carried previous to the 16th day of April?

A They accumulated from time to time. I think the first
130 one must have been put in there two or three weeks prior to the closing of the bank—the charge of the ticket on the individual ledger.

Q. What do you say and what is your recollection as to how many of these items were carried as cash items on the 15th day of April or the day before this ticket was charged up?

A. Must have been the same amount as on that slip now.
Q. That is your recollection?
A. Yes, sir.
Q. I will get you to look at that paper and state whether or not there is any item on there that was not a charge against Mr. Agnew and was not carried in the cash items as stated by you.
A. Only way I can answer that, that all these items were against Mr. Agnew and all chargeable to his account.
Q. They were all against him?
A. Yes, sir.
Q. And did they represent indebtedness of Mr. Agnew to the bank?
A. Yes, sir.
The district attorney then offered in evidence the aforesaid charge ticket; to which the defendant objected, to its introduction in evidence, as being inadmissible.
By the COURT: I think it is admissible.
The objection having been overruled and refused, the defendant did except.

By the COURT: Was that a regular check, such as, in accordance with the manner of conducting the business of the bank, was regularly drawn in such cases?
A. Yes, sir.
Mr. FOSTER: From whom did those items come to you?
A. Why, came through the window.
Q. From what person?
A. I can't remember what person the items came from.
131 Q. Do not those items come to you from another officer of the bank?
A. Most of these items were put into my basket from the cashier's department.
Q. Then all the information you have in regard to them is hearsay, or it appears——

Objected to as a conclusion.
By the COURT: Yes, sir; that is a conclusion.

Mr. FOSTER:

Q. Then you know nothing except that another person handed you those items?
A. That is all that I can say.

Mr. CLARK:

Q. Do you recollect who instructed you, if you were instructed, to make up this ticket?
A. I can't remember, but I think Mr. E. W. Agnew, Jr. It was either him or the head book-keeper, Mr. Huber.
Q. You were instructed in the line of your duty to enter up all these cash items?
A. Yes, sir.

Q. So that they might be charged to his account?
A. Yes, sir.

The United States attorney here reads the charge ticket in evidence, and during the reading of same asked the witness in regard to certain items therein as follows:

Q. "Central N. B." What does that mean?
A. Central National bank.
Q. "Chicago, $5,000." What does that mean
A. I can't remember.

Charge ticket filed in evidence, marked Exhibit E.

132 JOHN A. BISHOP called as a witness for the plaintiff and, after being duly sworn, testified as follows:

Direct examination by Mr. CLARK:

Q. Where do you reside?
A. At Clear Water Harbor, Florida, now.
Q. Did you ever live at Ocala?
A. Years ago and last winter.
Q. Are you acquainted with the defendant, Enoch W. Agnew?
A. Yes, sir.
Q. I will get you state if you had any connection with the Globe Phosphate Mining and Manufacturing Co. in the year 1894.
A. I did.
Q. Were you a stockholder in that company?
A. Yes, sir.
Q. Was it a corporation?
A. Yes, sir.

Defendant did object to admissibility of testimony relating to said incorporation as not the best evidence, the best being the certificate of incorporation or method of incorporation, but the court overruled said objection; from which decision the defendant did except.

Mr. CLARK:

Q. Did you hold any office in that company?
A. Yes, sir.
Q. What office did you hold?
A. I was president and general manager.
By the COURT: He can go on; he can testify in regard to it being a *de facto* corporation.

Defendant did object to witness testifying as to his being president of a corporation without producing the certificate of incor-
133 poration and without any proof of incorporation under the laws of Florida; which objection being overruled by the court, the defendant from said decision excepted.

Mr. CLARK:

Q. You can state what office you held.
A. I think I answered I was president and general manager.

Q. I will ask you if in your knowledge that company issued any bonds, the company of which you were president.

A. Yes, sir.

Q. I will get you to look at those and state what they are.

A. These are some of the bonds that were issued.

Q. Did you ever have any transaction with this defendant in reference to any of the bonds of that Phosphate Company?

A. Yes, sir.

Q. I will get you to state to the jury what that transaction was.

A. There were a number of transactions.

Q. The first transaction.

A. The first transaction was to place five of the bonds of the company when they were first issued, in December, 1893, as well as I can recollect, in the bank's hands as collateral security.

Q. What bank are you speaking of?

A. First National Bank of Ocala.

Q. Who was president of that bank at that time?

A. Mr. Agnew supposed to be; the defendant here.

Q. Were those bonds ever sold to Mr. Agnew or to the First National Bank of Ocala—those five bonds?

A. The first five bonds, to my recollection, was placed as collateral security——

Q. I asked if they were ever sold——

A. And then the next ones Mr. Agnew bought them for
134 the bank at fifty cents on the dollar.

Q. Do you remember the numbers of those bonds which he bought at fifty cents on the dollar?

A. I have the receipt; one to five, if I recollect.

Q. I will ask you, then, Mr. Bishop, if those are the bonds (indicating).

A. Can I look at receipts?

Q. Yes; anything to refresh your recollection.

(Witness takes papers from his pocket.)

A. Yes, sir; those are the bonds; one to five.

Q. When was it that these five bonds were sold to the bank for fifty cents on the dollar?

A. To the best of my memory, about the 10th of January, 1894.

Q. Mr. Bishop, who acted for the Phosphate Company and who acted for the bank in the negotiations looking to the sale of these five bonds?

A. I acted on behalf of the company and Mr. Agnew acted on behalf of the bank.

Q. If you know, please state how many of these bonds had been issued by the Phosphate Co. at that time, January, 1894.

A. The entire issue was authorized by the company, but those first ten bonds were the five sold to my bank and five to Mr. Agnew's bank; the other ninety were still in the hands of the company.

Q. Then you say that five bonds had been sold to your bank; what bank was that?

A. St. Petersburgh State Bank.

Q. And these five bonds had been sold to the First National Bank of Ocala, making ten bonds disposed of?

A. Yes, sir.

Q. Now, you say the other ninety bonds were still in the
135 hands of the Phosphate Company?

A. Yes, sir; at the time those five were delivered.

Q. Had any other of the bonds been sold or disposed of, other than the ten bonds that you have named, at that time, in January, 1894?

A. No, sir. You mean of that issue?

Q. Yes, sir. Was there any other issue?

A. Not that I know of.

Q. Do you know of all the issues of bonds of that Phosphate Co.?

A. Since I have been connected with it?

Q. Were there any before you were connected with it?

A. None that I know of.

Q. Do you know?

A. No, I do not; the records don't show there was any ever issued; it shows there was an attempt made, but no bonds ever issued under it.

The district attorney then offered in evidence the bonds; to the introduction and reading thereof the defendant did object, on the ground that the foundation is not properly laid yet for the introduction of said bonds, the incorporation of the company not having been proven or offered to be, bonds being from one to five; but, the objection being overruled by the court, the defendant excepted.

Mr. CLARK:

Q. Mr. Bishop, I will ask you if you had any transactions with the defendant in reference to the sale of any more of the bonds of the Globe Phosphate Mining & Manufacturing Company subsequent to this $5,000 of bonds?

A. I did.

Q. State to the jury what transaction you had with him in reference to the sale of any such bonds subsequent to that first sale.

A. Some time about the first of February—as well as I can recollect, between the 5th and 7th; I can't give the exact date—
136 1894, for the benefit of the company, I wanted to get machinery and erect a plant, &c., and Mr. Agnew and myself had undertaken to try and get the company in better shape, and he came to me, as we had guaranteed to advance money to the company—he more than I—at that time he asked me to put some of the bonds in his hands as collateral security, and about the 1st of February some time I gave him fifteen bonds to be held as collateral security to secure any advances.

Q. Did you sell him any of the bonds?

A. Never sold him any; no, sir; the board of directors met and authorized the delivery to him of $35,000 of bonds on the 12th of April, but the bonds were not then in the State, they were in New York, and the delivery—no part of the delivery took place, as well as I recollect, till some time in May, and the only bonds that were

sold to Mr. Agnew at all was sold and delivered to him about the 1st of May.

Q. What were those bonds? You say they authorized the delivery to him of $35,000 of the bonds?

A. Yes, sir.

Q. Now, why were they to be delivered to him?

A. He bought them.

Q. How many bonds did he buy?

A. $35,000 worth.

Q. What did he pay for those bonds?

A. Twenty-five cents on the dollar, or was to pay.

Q. You stated that $15,000 of those bonds were held as collateral security?

A. Yes, sir.

Q. Then, how many bonds were delivered to him under that contract of purchase?

137 A. The fifteen bonds were delivered to Mr. Agnew as collateral security some time about the 1st of February, and in the first part of May—I think it was May—when he wanted the $35,000 that he had agreed to take from the company and that the company had authorized the officers to deliver, or the directors had for them, when they came to deliver them Mr. Agnew had these $15,000 of bonds that he held as collateral security, but which he had never given to the company any definite amount of advances on, and when it came to deliver the $35,000, he having these fifteen on hand, I would not deliver to him all of the other thirty-five until some definite disposition was made of the fifteen in his possession.

Q. How many did you deliver to him?

A. I think he got twenty.

Q. Now, how much did he pay for the twenty bonds?

A. Twenty-five cents on the dollar.

Q. The bonds were all of what denomination?

A. I have no memoranda. The only way I could arrive at the numbers of the other twenty that were delivered to him——

Q. I am not speaking of the numbers, the denominations. Were they $100, $500, or what?

A. $1,000 on the face.

Q. Then these twenty bonds were for the par value of $20,000 worth?

A. Yes, sir.

Q. They were delivered to him under a contract of sale and he paid twenty-five cents on the dollar?

A. Yes, sir.

Q. Who were you acting for in the sale of those bonds?

A. For the phosphate company.

Q. Who was Mr. Agnew acting for in the purchase of those latter bonds?

A. For himself.

138 Q. Individually?

A. Yes, sir.

Q. Do you know that?

A. I know he so stated.
Q. State to you?
A. Yes, sir; so understood.
Q. That was the defendant here?
A. Yes, sir.
Q. You say you have no memoranda by which you can identify the numbers. I will get you to look at those bonds and state whether or not they are some of the bonds of the same issue (handing papers to witness) of those that were sold to Mr. Agnew.
A. I have a memoranda of the bonds——
Q. I just simply want to know if those were the same issue as the other bonds?
A. Yes, sir; the same.

Mr. CLARK: I will file these with the clerk until he can identify further by number (handing same to the clerk).

Q. I will get you, Mr. Bishop, to examine those and state whether those ten bonds are of the same issue as the five you testified about (handing papers to witness).

Mr. FOSTER: You expect to connect those?
Mr. CLARK: Yes; I am keeping them separate.

A. Yes, sir.
Q. After you had consummated the sale of the first $5,000 of bonds of this phosphate company to the bank through Mr. Agnew, as you testified, that was in January, 1894?
A. Yes, sir; you mean the five?
Q. Yes. Now, I will ask you to state to the jury what con-
139 dition the Globe Phosphate Mining and Manufacturing Company was in—what financial condition it was in—at that time.
A. It was insolvent.
Q. Was Mr. Agnew, this defendant, a stockholder in the Globe Phosphate Mining and Manufacturing Company at that time?
A. In January; yes, sir.
Q. Did he hold any official position in that company at that time?
A. He was a director.
Q. Have you had much experience in the handling of stocks and securities?
A. I can't say that I have a very extensive one; have had some.
Q. I will get you to state to the jury what these bonds were worth on the market in January, 1894.
A. I think it would depend a great deal upon what interest on the market. I supposed on the market they wasn't worth anything, because the market would not have any interest in the company.
Q. Taking into consideration the condition of the insolvency of the company, which you have testified to, what would you say those bonds were worth in the open market?

A. My experience was that they wasn't worth anything; I tried to sell them.

Q. You say you have tried to sell them?

A. And in speaking of the insolvency of the company I think I ought to qualify my statement there a little bit, in this, that the company by unfortunate circumstances some way had gotten considerably in debt, and it had no earning capacity, to such an extent that all the lands had been sold—went to the State for taxes, and, while the company did not own any lands themselves, they had equities of redemption, which was *done*, and just after-
140 wards and through some of the money that was received from the sale of these bonds, so that after the first sale of the bonds the company was in a very much better condition than it was at the time the bonds were issued.

Q. Has that company ever been in a good financial condition, or has it ever mined phosphate and marketed the same sufficient to pay any of the interest upon its stock?

A. No, sir.

Mr. FOSTER: Stock or bonds?

Mr. CLARK:

Q. Has it ever paid any interest upon its bonds?

A. Never had a chance; never had more than got started good before dissensions got in the company and the courts stopped operations.

Q. You say you made some effort to float the bonds of this company?

A. Yes, sir.

Q. When was that effort made and where?

A. It was made in March, 1894.

Q. And where?

A. In New York.

Q. Did you go there for that purpose?

A. Yes, sir.

Q. I will get you to state to the jury if you found any market for those bonds at all, or could you sell them at any price?

A. I didn't succeed in getting a single offer for the bonds at any price.

Q. Was there any encumbrance upon the property of this company existing prior to the issuance of these bonds?

A. There was a judgement against the company, which was, of course, a lien, and a Mr. Page, of London, had a claim upon 280 acres of the land.

Objected to as not evidence to prove that claim.

141 Mr. CLARK: I don't want any claim proved.

Q. Was there any valid subsisting lien upon that property prior to the issuance of those bonds?

A. The judgement was certainly a valid lien on the face.

Q. Was there a mortgage?

A. A mortgage of record, although it is a disputed claim.

Cross-examination:

Q. How long were you connected with the Globe Phosphate Company prior to January, 1894, when you sold the five bonds to Mr. Agnew?

A. Only about three or four months. My connection began on the 9th day of September, 1893.

Q. You became president of the company at that time?

A. Yes, sir.

Q. Who issued these bonds? Were they issued prior to the time you became president or afterwards?

A. I did it in behalf of the company.

Q. When were these bonds issued?

A. They went into effect, if I remember right, the 12th day of December, 1893; that is the day the first five—they were signed on behalf of the company. The first ten were signed on the 11th day of December, 1893.

Q. Had you at the time gone into that company? You took stock in it?

A. Yes, sir.

Q. How much stock did you own?

A. I suppose somewhere in the neighborhood of four thousand shares,

Q. What was the par value of the shares?

A. $100 each.

Q. Then you owned, at par value, at the time you were president of the company, about $400,000 of the stock of the company?

142 A. Yes, sir.

Q. What was the company organized for—what capital was it organized at?

A. There was issued stock two million nearly three hundred thousand dollars.

Q. $2,300,000. How much land did your company own at the time you went into the presidency and took $400,000 worth of stock?

A. Didn't have any; only equities in some.

Q. But you sold these five bonds, if I understand you, to Mr. Agnew—that is, he took them as collateral—and you took the money you got for them and paid off the taxes?

A. That is, the two banks; they owned the bonds. That money was placed to the credit of the company, and the company then used that money to redeem the lands from the State that had been sold.

Q. Then, at the time you speak of the company being insolvent and not owning any lands, the only reason you say that is that the taxes had not been paid and had been forfeited to the State?

A. Yes.

Q. And they had the right of redemption?

A. Well, they always had the right of redemption as long as they stayed in the State, but some had passed that right.

Q. How many of them?

A. A thousand acres; maybe two thousand.

Q. How many thousand acres you say you owned altogether?

A. Had then about 8,500 acres (eight thousand five hundred acres).

Q. You said something about there being a mortgage on this land. How much of a mortgage was it and on how much of the land?

A. About two hundred and eighty acres.

Q. What became of that mortgage?

143 A. That mortgage is still in existence—still being disputed.

Q. Never has been foreclosed, has it?

A. No, sir; been numerous attempts made at it.

Q. And who was defending it, the company?

A. Yes, sir.

Q. Who represented the company?

A. I do, up to the present time.

Q. Then you state as one of the reasons why the company was insolvent that there existed on 280 acres of your 8,000 and odd acres a mortgage, which you, as president of the company, did not admit and had been fighting ever since?

A. Yes, sir.

Q. Now, you state that you tried to float these bonds in New York?

A. Excuse me a moment; didn't you ask me if that was the reason I said the company was insolvent, because of this mortgage?

Q. No; I said you stated that was one of the reasons.

A. Yes; one of them.

Q. The other reason was that their lands had been forfeited by failure to pay taxes?

A. And utter inability, having no earning capacity.

Q. There were three reasons which tended to make you testify the company was insolvent; one was the fact the land had not been redeemed at that time from the State, that a mortgage existed on 280 acres of the land, and had no earning capacity?

A. A number of reasons; probably the amount of floated indebtedness that was not secured and which the company had not been able to meet to the extent of some $30,000.

Q. How much was the mortgage?

A. The mortgage was $12,000. I am approximating.

144 Q. Who redeemed this land from the State and got that equity of redemption?

A. The company.

Q. Who acted for the company?

A. I did.

Q. How much did it cost?

A. Cost about $2,500.

Q. Now, when was that done?

A. That was done, I think, in March. I am not sure. I cannot recollect exactly.

Q. That was in March, 1894?

A. I think so—either latter part of February or March.

Q. It was done before you went to New York with the bonds?

A. Yes, sir.

Q. What other change was there in the condition of the company before you went to New York with the bonds—had you begun work?

A. Begun to erect a plant—opened up the mine. We had removed a good many clouds from the titles. I had forced the deeds to be made back to the company for lands that had been sold by previous officers of the company by carelessness or something, it don't make any difference what. They had been sold at public sale and bought in by some of the officers of the company, and I brought suit against them and got it back; commenced clearing up the titles as fast as possible.

Q. At that time, when you went to New York to negotiate this issue of bonds, what did you consider the property of the company worth?

A. It would depend a great deal upon how the property was handled and who managed it and what——

Q. What you considered it worth would not depend on
145 that. You were in the management of that yourself. What did you consider it worth at that time?

A. I considered it worth a great deal.

Q. How much?

A. $150,000.

Q. You considered it worth $150,000?

A. Yes, sir; if the management pulled together and tried to make the company worth something.

Q. It was bonded for how much?

A. $100,000.

Q. You had then redeemed the State lands?

A. Yes, sir.

Q. You had your titles in better shape than they were, but you hadn't paid the $12,000 mortgage?

A. No, sir.

Q. You didn't admit its validity?

A. No, sir.

Q. But contested it on the ground that it was not a valid claim?

A. Yes, sir.

Q. Then property which you testify that in the latter part of 1894, before you got control of it or just after you got control of it, the company was insolvent, was in March, 1894, upon the payment of only about $2,500 to clear up the titles, worth in your opinion $150,000?

A. No, sir; I would state this—I qualify my statement as to its value, as to its being based upon how the property was handled—that if the property—in other words, the 1st of December, 1893, the equities of the Globe Company had been put up for sale, I do not believe it would have paid the indebtedness of the company, because nobody would have paid for lands in the condition they were
146 at the time; but after the titles were more definitely fixed and

they had recovered their equities and got into something like shape, and strong management would have taken hold of it, it would have assumed altogether different position.

Q. To whom did you represent the value of that property in New York, and at what price did you represent it in your efforts to float these bonds?

A. I never represented the value of the property at all, except I thought it was good security.

Q. Did you ever make any statement with reference to the value of this property after March, 1894, with a view of floating its bonds in New York or elsewhere?

A. To whom?

Q. To anybody.

A. I certainly always made just such statement as I made before the court.

Q. Did you at any time make any affidavit as to its value?

A. I think I have.

Q. What value did you put on it in your affidavit?

A. I don't remember exactly.

Q. Approximate it if you can.

A. I suppose somewhere in the neighborhood of what I put on it today.

Q. When was that affidavit made?

A. I have made more than one, I think.

Q. Now, you state that five of these bonds were put up as collateral for advances made by the First National Bank of Ocala and were sold to the First National Bank of Ocala subsequently at fifty cents on the dollar. Who made that sale?

147 A. I did.

Q. Where was the sale made?

A. The first part of the discussion of what we should do with the bonds brought about this plan between Mr. Agnew and myself: that if we allowed the two banks to take ten thousand dollars of the bonds—$5,000 each—that it would give the bonds a better credit and standing in the market, and that is the reason the two banks took the bonds.

Q. You were a banker yourself at the time?

A. Yes, sir; connected with the St. Petersburgh State bank.

Q. And Mr. Agnew purchased those bonds from you as president of the phosphate company?

A. Yes, sir.

Q. How did he pay you?

A. Gave a deposit slip in the bank; deposited the money to the credit of the Globe Company.

Q. Did he or not, at the time you sold him these bonds, give you his individual check for the money to the company, and did you not deposit that check?

A. I don't think so.

Q. Can you state positively?

A. I don't think he gave me the deposit at all. I think he gave it to my brother.

Q. Were you present?

A. I was present when the payment took place; if I wasn't, I was in the bank.

Q. Do you remember now whether or not he gave you, yourself, or your brother his individual check in payment for those bonds?

A. The best of my recollection is that he simply gave a deposit slip; never gave any check.

148 Q. Can you swear positively?

A. No, sir.

Q. Then when you say he gave a deposit slip you are simply testifying to your opinion?

A. To the best of my recollection; at all events, I testify I know the company got the money.

Q. You testified, however, that the first sale of bonds was to the bank?

A. Yes, sir; the understanding between him and I was that it was to the bank.

Q. And it was done on your part, after consultation, for the purpose of giving the bonds standing?

A. Yes, sir.

Q. Since this transaction between yourself and Mr. Agnew with reference to the sale of the bonds of the Globe Phosphate Company, did your relations remain the same with reference to the Globe Phosphate Company that they did at that time?

A. Between him and I?

Q. Yes.

A. No, sir.

Q. Differences have arisen with reference to the Globe Phosphate Company since that time?

A. Yes, sir.

Q. Are your feeling- towards Mr. Agnew friendly or unfriendly?

A. Not friendly.

Q. Is it or not a fact that since that time you have been arrested and are now under indictment in Marion county, charged with illegal transactions concerning these same bonds, at the trial of which preliminarily Mr. Agnew was one of the witnesses against you?

149 A. Certainly am. Not these bonds here in court, but of the same issue of bonds.

Q. Is it not a fact that there are pending against you in Marion county more than one indictment?

Mr. CLARK: For what?

Mr. GUNBY: I mean generally. I want in cross-examination to show by the witness the condition and situation he is in for the purpose of effecting the credibility of his testimony. If the court pleases, I will put the question differently.

Q. Are you under more than one indictment in Marion county with reference to this issue of bonds by the officers of this Globe Phosphate Company?

A. I know of but one indictment that I am under at all for anything.

Q. And that indictment?

A. Is in regard to these bonds, and was brought about through the influence and instigation of Mr. Agnew—at least so I have been informed by creditable parties.

Q. And that is the reason your feelings towards him are not as friendly as when you negotiated these bonds?

A. That is not alone. I have a suit pending against his bank in which I have more feeling than in that—some money involved. This is only a small matter—this indictment.

Q. You consider, then, that the suit in which the money is involved is very much more material and more interesting to you than the suit in which you are indicted?

A. Yes, sir; because I think I can appreciate very materially why the indictment was obtained.

Q. Now, with reference to the second sales of these bonds to yourself and to Mr. Agnew, when did that occur?

150 A. I think I stated that it was some time about the 12th of April that the board specifically ordered me to deliver. I had simply authority to sell private—general authority.

Q. And at that time you delivered to Mr. Agnew twenty more of those bonds—after the April authority?

A. Yes; Mr. Agnew obtained some twenty bonds.

Q. That authority, however, was given some time in March, I believe you said, was it not?

A. I said in April.

Q. After your return from New York?

A. Yes, sir.

Q. What kind of machinery and improvements did you erect on that property?

A. Quite a large plant of washers; hoisting machinery; put down railroad tracks; uncovered rock; put down saw-mill. The full extent of the improvements cost the company, I suppose, fifteen or twenty thousand dollars—somewhere along there.

Q. Have you or not had a good deal of experience in phosphate land since the discovery of phosphate in Marion county and adjoining counties, in dealing in it—handling of phosphate property?

A. I have had some.

Q. Was or was not the phosphate property owned by the Globe Phosphate Company of valuable character and quality?

A. It had chances to be. The longer I have been in the phosphate business, the less I find out I know about it. At first, I used to think I could tell when a piece of land was very valuable; but after I got more experienced in it I decided it was a very difficult matter to tell what was in the land—what it was worth. The location of the land, quality of the land, and the surrounding

151 country and indications was a good thing, I think, to base an opinion on. It might develop into valuable land.

Q. At the time you took $400,000 of its shares and took charge of it you thought it was valuable property, did you not?

A. Yes, sir. I paid $27,000 for $400,000.

Q. And became president of the company?

A. Yes, sir.

Q. And bonded it for $100,000?

A. Yes, sir.

Q. And afterwards how many of these bonds were issued and floated?

A. There were 100,000 issued.

Q. Were they all negotiated?

A. Yes, sir.

Q. Is it not a fact that $20,000 of that issue—the legality of the negotiation is under contest, is it not?

A. I don't think I can answer that question.

Q. I mean the legality of it. There's 20,000 of them that are under contest—some question about?

A. Some dispute over.

Q. What was the condition of the phosphate industry in the latter part of 1893 and beginning of 1894 as compared with the condition of the phosphate market and industry today?

A. It was very much better than it is today.

Q. Is it or not true that the result of investment in phosphate lands and plants and their values upon the market today is shown to be very much less than it was in 1893 and '94?

A. You ask my opinion as to whether——

Q. You are in the phosphate business, are you not?

A. Yes, sir.

152 Q. Is it not a fact that the value of property for the purposes of sale and securities upon phosphate property are very much less valuable upon the market today than they were at the time these securities were by your company sold for the company?

A. Yes, sir; very much more.

Q. The phosphate land and investments which would have been considered good investments by you as a phosphate man in 1893 and 1894, would they be considered good investments today, in the condition of the market and industry?

A. No, sir; to pay the same price today for the land that was being paid at that time or that was being asked for the land at that time would not be a good piece of business, because you could buy them a heap cheaper; but there are lands which, I presume, even today, certain tracts, that could be sold for very near as much now as then.

Q. Is it not a fact that phosphate property is in a very much less demand now than at that time?

A. Yes; and also a fact that it is very much less on the market.

Redirect examination:

Q. In your cross-examination you have said that this mortgage for $12,000 was on 280 acres only of this land. I desire to ask you how that 280 acres compared in point of value to the balance of that property.

A. It has been differently estimated. Some interested parties thought it contained the bulk of all the valuable deposit on the

company's land. I think it was rather an unfair criticism of the value of the land; still a great many have said so. My own opinion is, as far as the development is concerned, and a man can judge from what is in sight, the 280 acres is worth half as much as all
153 the balance put together, but that is only based on what is developed, because you might go some other place and find a good deposit and develop, and it would be altogether different.

Q. But I am speaking of the relative values in so far as your knowledge went, not what might be found on it.

A. You mean you want me to say if I was going to buy the property what proportion I think the 280 would bear to the balance?

Q. Yes, sir.

A. If I was going to pay $20,000 for the whole tract of the Globe Company's lands, and I thought that was all that they were worth, if I found I could not get the 280 acres of land I would not pay more than five or six thousand dollars for the balance, as they appear developed today.

Q. You say it was agreed that you for the St. Petersburgh bank, and Mr. Agnew for the First National Bank of Ocala should take $5,000 each of the Globe Phosphate Company stock at fifty cents on the dollar?

A. Yes, sir.

Q. I desire to ask you if you had not been interested in the Globe Phosphate Company and had not been interested in the floating of the bonds of that company, with your knowledge of the affairs of that company, would you as a banker have invested $2,500 in $5,000 of its bonds?

A. If it had not been for the peculiar situation—relation between myself and the company and the bank—I would not have let my bank take the bonds at all.

Q. Would you, with your knowledge of the affairs of the Globe Phosphate Company, if you had not been interested in the Globe Phosphate Company, would you as a business man, as a banker, have considered an investment of $2,500 in $5,000 of its bonds a good and safe investment?

154 A. I stated if it had not been for the peculiar relationship I would not have let my bank take them at any price.

Q. In reference to this criminal prosecution against yourself in Marion county, I will get you to state to the jury when that prosecution was instituted.

A. Last June.

Q. Were you a witness before the grand jury, the United States court, at this place in June of last year in reference to the matter now upon trial?

A. Yes, sir.

Q. Was that transaction in Marion county instituted against you before or after you were a witness here before the grand jury?

A. My opinion is, it was afterwards; just a few days afterwards. I don't remember the date of the sitting of the court here.

Q. Were you arrested after you left here and went back, or before?

A. I can tell you the dates I was arrested. As I don't know what

time this court sat here in June, I can't say. I was arrested, I think, some time about the 20th of June; at least my trial. I was first arrested and the case carried before Judge Hill, county judge, and a day set for a hearing, and on that day I went there for trial, and just before the hour the gentleman who was pushing the matter came and asked for it to be dismissed, and the judge refused to do so until I appeared, and then they left before I got there. I was there at the hour, and, they not being present, the case was dismissed, and the very same afternoon I was arrested again and carried before another officer—that is, a justice of the peace—and then the case was set down for trial. I think it was a week afterwards, and that was on the 6th of July, so, I not knowing these dates, those are the connecting circumstances.

155 Q. Do you remember the time when this defendant was arrested and carried before a commissioner at Sanford?

A. I don't think I was in Ocala at that time.

Q. Do you remember the occur-ence, about when it was?

A. Yes, sir; some time in the summer. I don't remember.

Q. Was it previous to the meeting of the United States court here in Jacksonville in June last year?

A. Yes, sir; I think it was.

Q. Were you arrested and prosecuted before or after his arrest?

A. I think it was after the arrest; it must have been.

Q. I will get you to call off the numbers of those bonds you have already identified as being of the same issue as the five bonds you testified were sold.

A. 25, 24, 23, 22, 21, 15, 14, 13, 12, 11.

Q. I will get you to call the numbers of those that you have testified as being of the same issue as the five originally sold.

A. 63, 61, 65, 67, 71, 73, 75, 77, 79, 69.

Q. Were those bonds, the 100 bonds issued, numbered consecutively from one up to a hundred?

A. Yes, sir.

Q. Were any of those numbers duplicated—any two of the bonds of the same number?

A. No, sir.

Q. I will ask you how many acres of those 8,500 your company at the time of the sale of those bonds had a valid title to?

A. I stated that at the time the bonds were first sold, in January, that none of the land had been redeemed from the State.

Q. Was there any of those lands, in addition to the fact that they had all been sold for taxes—were there any of those

156 lands to which your company did not have absolute title?

A. Yes, sir. I think the lawyers reported that they could get—they thought about five thousand acres of the land had a very fair title to them; that the remainder of them, more or less, were under cloud.

Recross-examination:

Q. Were you or not connected with or interested in the Globe Phosphate Company prior to the time Mr. Agnew became interested in it?

A. No, sir.

Q. Did you both become interested in it at the same time?

A. No, sir; he was interested before I was.

Q. Mr. Agnew was?

A. Yes, sir.

Q. Did you at any time make any representations to him with reference to the value of this property?

A. Only in a general way. He seemed to know more about the property than I did when I went into it.

Q. Then you never made any representations to him for the purpose of having him advance any money or take any bonds—representations as to the value of the property?

A. Up to the time that I sold the first five bonds to the two banks I don't think I had ever seen any of the property that had been mined or was being mined of the company. I only knew the land by the numbers of the land that was handed me.

Q. Are you sure and can you state positively that Mr. Agnew was a stockholder in that company prior to the time you were a stockholder in it?

A. I can state this: the books of the company show that Mr. Agnew had 480 shares of stock in the Globe Company prior to my going into it.

157 Q. Do you or not know, as a matter of fact, that the stock held by Mr. Agnew at the time you went into the company was held as collateral security solely for some money due the bank?

A. That was not the way I understood it. I think there was two issues of that amount of stock, to the best of my recollection. I think the books will show better than I can state from memory.

Q. Have you got the books?

A. I have not.

Q. Can you state from memory?

A. The best of my recollection is Mr. Agnew held Mr. McKay's some 7,000 shares of stock as collateral security, and it was by the representation of Mr. McKay and Mr. Agnew that I agreed to take the 3,000 shares of stock and go into the thing. Mr. Agnew held all of Mr. McKay's interest, some $7,000, as collateral security, and in addition to that he held some stock, to the best of my recollection, in his own name.

Q. Are you positive of that?

A. He also had some as pledgee—stood in his name as pledgee—and I think that was afterwards; first, the certificate issued as pledgee, and then that cancelled and issued to Mr. Agnew personally.

Q. Are you positive before the time you went into that company Mr. Agnew was a stockholder and held stock as a stockholder which was not held by him as collateral or a pledge?

A. To the best of my recollection; the books can show better than I can recollect.

Q. Did you or not go to Mr. Agnew before you went into that company, or about the time you went into it, and make representations to him of its value and induce him to go in equally with you in taking stock?

158 A. To the contrary, Mr. Agnew made the representations to me and told me he had the control of some seven or eight thousand shares of the stock, and that we could make a pool. My condition of going into the company was on the condition Mr. Agnew would assist in furnishing his money to put the company in shape, and it was then the trust was formed by which I hold, on Mr. Agnew's behalf, a certain amount of stock as trustee.

Q. Now, you, in re-examination, testified with reference to your arrest. Is it true that you were arrested upon information sworn out by Mr. Agnew?

A. No, sir; not that I know of; not openly, at all events.

Q. The affidavit was not made by him?

A. No, sir.

ALEX. MCINTYRE recalled as a witness for plaintiff and testified as follows:

Direct examination by Mr. CLARK:

Q. What business were you engaged in in the months of February and May, 1894?

A. Cashier of the First National Bank of Ocala.

Q. Who was president of that bank at that time?

A. Mr. E. W. Agnew, the defendant here.

Q. I will get you to look at that strip of paper and state if you recognize it (handing paper to witness).

A. Yes, sir; that is my handwriting.

Q. And I will get you to look at that one also and state if you recognize it (handing another paper to witness).

A. That is my handwriting.

159 Q. What is the first paper I handed you?

A. Deposit ticket.

Q. Please explain what a deposit ticket is.

A. A deposit ticket is a memorandum of items to be credited to account.

Q. To be credited to a person's account?

A. Yes, sir.

Q. Does it represent or suppose to represent items that had been deposited to the party's credit in the bank?

A. Yes, sir; represents items—either money or notes or other items—any item of credit.

Q. Such as the bank is willing to accept and credit to his account?

A. Yes, sir.

The district attorney then offered in evidence said deposit ticket, to which the defendant objected to the introduction of the same,

being a deposit slip to the credit of E. W. Agnew, dated Feb'y 12th, 1894, on the ground that it is immaterial in the present stage of the case, the witness has not testified as to any personal knowledge as to what bonds they were.

By the COURT: He can testify in regard to what information he has, how he came to make out that slip, and what it is founded on, the facts and circumstances of it; that, standing alone by itself, I think hardly sufficient.

Mr. CLARK:

Q. I will get you to look at that paper again. You say that is a deposit ticket?

A. Yes, sir.

160 Q. For whom?

A. E. W. Agnew, the defendant.

Q. You say it is in your handwriting?

A. Yes, sir.

Q. How did you come to make that deposit ticket?

A. I made it at the request of Mr. Agnew, the defendant here.

Q. What item of deposit is there upon that ticket?

A. Credit of bonds, $10,000.

Q. What bonds were those?

A. It says, "bonds, $10,000."

Q. What do you mean by "bonds, $10,000"?

A. It means bonds of the Globe Phosphate Company.

Q. Bonds of the Globe Phosphate Mining and Manufacturing Company?

A. Yes, sir.

Q. Did you have those bonds in your possession at the time you made that deposit ticket?

A. Yes, sir.

Q. Do you remember the numbers of those bonds?

A. No, sir; I don't.

Q. How many bonds were there?

A. I think the bonds were $1,000 each; would be ten bonds.

Q. Who handed you the bonds, if anybody did, at the time you made that deposit ticket?

A. Mr. Agnew, the defendant.

Q. You say you made that by his request. Did he tell you how to make that out?

A. He just asked to give him credit for the bonds, $10,000.

Q. He asked you to give him credit for the bonds, $10,000?

A. Yes, sir.

161 Paper offered in evidence now.

Mr. Clark reads a portion of same to the jury.

By the COURT: That is not all of that slip. Ask him whether or not that $10,000 was the entire credit placed to Mr. Agnew—how that is.

Mr. CLARK:

Q. What is that other item there, Mr. McIntyre?
A. Item, credit of bonds, $10,000; less cash, item, $9,177.49.
Q. What does that mean—less cash items?
A. It means some memoranda in the drawer against him representing cash that he owed the bank.

Deposit ticket, Feb'y 12, 1894, read in full to the jury and filed in evidence, marked K.

Q. Now, what is that paper (handing another paper to witness)?
A. This is another deposit ticket, May 12th, 1894.
Q. Whose deposit ticket is that?
A. Deposit ticket to the credit of Mr. E. W. Agnew.
Q. What is the item of deposit there?
A. Bonds of the Globe Phosphate Company, $10,000.
Q. Is that the Globe Phosphate Mining and Manufacturing Company?
A. Yes, sir.
Q. How did you come to make out that deposit ticket?
A. Made it at the request of Mr. Agnew, the defendant here.
Q. Did you have the bonds in your possession at the time you made that?
A. Yes, sir.
Q. How many were there?
A. Ten, $1,000 each.
Q. What did Mr. Agnew say to you? You say he requested you to make that. What did he say?
162 A. He said, "Here's $10,000 of bonds; place these to my credit; I will guarantee the bonds to be all right; give you a written guarantee the principal and interest will be paid."
Q. And you made out the ticket in accordance with that instruction?
A. Yes, sir.

Deposit ticket, dated May 12th, 1894, offered in evidence, read, and filed, marked Exhibit J.

Q. What did you do with those bonds after you made those deposit tickets?
A. Put them in the safe.
Q. Did you make any debit entry to correspond with the credit of the $20,000—the two credits?
A. Yes, sir; I charged to stocks and bonds account.
Q. You say you charged to stocks & bonds account?
A. Yes, sir.
Q. On this Feb'y 12th, 1894, what did you charge on the stock and bonds account?
A. I charged the amount of the bonds.
Q. How much?
A. $10,000.
Q. Then on May 12th what entry did you make?
A. Charged $10,000 same account.

Q. You say you charged $10,000 to stocks and bonds account on Feb'y 12th, 1894; was that a debit to the bank? Was it a charge against the bank?

A. Couldn't be a charge against the bank.

Q. Who would it be a charge against? Mr. Agnew got credit for them, did he not?

A. It would be charged to the account and be an asset;
163 charged to the stocks and bonds account and be assets of the bank.

Q. They were turned into the bank as a part of the assets of the bank?

A. Yes, sir.

Q. What price were they turned into the assets and became a part of the assets of the bank, and what amount was the bank charged for them on the books of the bank?

A. They were turned into the bank at their par value, $10,000.

Q. Was the same true as to the transaction of May 12th, 1894?

A. Yes, sir.

Q. In both instances they were turned into the bank at par?

A. Yes, sir.

Cross-examination:

Q. Did this transaction show a sale from Mr. Agnew to the bank—these transactions of $20,000 worth of bonds of the Globe Phosphate Mining Company—and a payment by the bank to Mr. Agnew of the amount of the purchase?

A. Yes, sir; those transactions were to show the bank paid $20,000 for those bonds.

Q. That the bank bought from Mr. Agnew $20,000 of the bonds of the Globe Phosphate Company and paid him par for them?

A. Yes, sir.

Q. The bonds were put into the securities and assets of the bank, and Mr. Agnew's personal account in the two transactions was credited with that amount?

A. Yes, sir.

Q. You said something about a guarantee. Did you state fully with reference to it?

164 A. I will state that there were these two credits—that is, the only one I am testifying to now.

Q. Yes.

A. In each instance Mr. Agnew stated that he would be personally responsible to the bank that these bonds would be all right. He would guarantee the bank both principal and interest; that he would make a written guarantee at any time I would write it out.

Q. How long did you carry those bonds as assets of the First National Bank of Ocala?

A. Carried them straight along as long as I was cashier of the bank.

Q. When did you cease to be cashier?

A. June, 1894.

Q. Were they properly listed and entered up as assets of the bank upon the books of the bank by you as cashier?

A. They were.

Q. Were they properly reported and carried in your reports to the Treasury Department, if you made such reports, as assets of the bank?

A. They were.

Q. How often?

A. They were reported every time the report was made; right straight along. I couldn't say how many reports were made.

Q. You made the reports as cashier as long as you were cashier?

A. Yes, sir.

Q. And these bonds were carried as assets of the bank, at par, as long as you were cashier?

A. Yes, sir.

Q. And by you reported to the Comptroller of the Currency as assets?

A. Yes, sir.

(Court adjourned to 2.30 p. m.)

165 (Court convened at 2.30 p. m., pursuant to adjournment.)

J. V. BURKE was called as a witness for the plaintiff and, being duly sworn, testified as follows:

Direct examination by Mr. CLARK:

Q. Where do you reside?

A. Ocala, Florida.

Q. How long have you lived there?

A. Between four and five years.

Q. Were you connected in any way with the Globe Phosphate Mining and Manufacturing Company?

A. I had an interest in it.

Q. Did you have any official connection with it?

A. Yes; I was one of the directors of the company.

Q. Were you a director of that company in 1894?

A. Yes.

Q. Were you a director of that company in February, 1894 (1894)?

A. Yes; I have been a director of the company since some time in 1893, I think.

Q. Were you also a director in May, 1894?

A. Yes, sir.

Q. I will ask you to state to the jury if that company ever issued bonds.

A. Yes; bonds were issued.

Q. How many?

A. $100,000 of bonds.

Q. How many bonds were there?

A. One hundred.

166 Q. Did that company ever issue any other bonds other than that one hundred bonds of $1,000 each?
A. Not to my knowledge; quite sure it did not.

Cross-examination:

Q. You say $100,000 of bonds were issued by the company while you were a member of the board of directors?
A. Yes, sir.
Q. How many of them were sold and issued?
A. I can't say.
Q. Do you know how many of these bonds were by order of the board of directors placed upon the market?
A. $10,000 that I know of.
Q. You don't know of any more?
A. Not personally.
Q. You don't know, then, how many of them were really issued and used?
A. No.

167 The witness ALEX. MCINTYRE was then recalled for the plaintiff and testified as follows:

Direct examination by Mr. CLARK:

Q. You have already been sworn. You testified that this was the book in which the minutes of the directors' meetings of the First National Bank of Ocala were recorded (indicating minute book)?
A. Yes, sir.
Q. You have already testified you were cashier of that bank up to June, 1894?
A. Yes, sir.
Q. Were you present at all of the directors' meetings of that bank, say from Oct., 1893, up to June, 1894?
A. Yes, sir; I think I was.
Q. Are you familiar with the actings and doings of the board of directors of that bank during that period?
A. Yes, sir.
Q. You testified this morning that these two items of $10,000, Globe Phosphate bonds, were placed to the credit of Mr. Agnew on the books of the association?
A. Yes, sir.
Q. I desire to ask you if the board of directors of that bank ever consented that those two amounts of $10,000 each should be placed to the credit of Mr. Agnew on the books of the association.

168 To which question the defendant did object on the ground that the indictment charges the defendant with having placed the bonds to his credit without the knowledge and consent of the said banking association, and it is not charged that it was done without the authority of the board of directors of the said bank.

If it should appear from this evidence that the association did or did not consent to the transaction it could have no effect upon the case, in that it must be done without the authority of the directors, and to be done without the authority of the directors must be affirmatively proven; but the court overruled said objection; to which decision the defendant excepted.

A. The question was if this was done by the consent of the board of directors?

Q. Yes, sir.

A. There was no act of the board of directors that authorized it.

Q. Was there ever a meeting of the stockholders of that bank held at which it was consented to or authorized that these two credits of $10,000 each should be entered to the account of Mr. Agnew?

A. No, sir.

Q. I will get you to take that book, and I want to ask you
169 does that book record the proceedings of stockholders' meetings as well as those of directors' meetings?

A. It does (examining book).

Q. When was the last stockholders' meeting held during the year 1893?

A. My recollection is only one stockholders' meeting held in a year.

Q. When was the last one held in 1893?

A. On the 10th day of January, 1893.

Q. When was the first stockholders' meeting held in 1894?

A. I suppose it was on the——

Mr. FOSTER: Don't suppose.

Witness examines book.

A. 9th of January, 1894.

Q. That was the stockholders' meeting?

A. Yes, sir.

Record of the meeting of stockholders January 10th, 1893, and of their meeting Jan'y 9th, 1894, tendered in evidence.

To the introduction in evidence of which book as offered the defendant objected on the following grounds: That it is immaterial and irrelevant, in that the defendant in the indictment is not charged with any offence which is made an offence if com-
170 mitted without the authority of the board of directors, and the offences which are so made, if committed without the authority of the board of directors—none of them are charged in the indictment against the defendant; that if the money alleged to have been misapplied was so misapplied the authority of the directors would not have condoned the offence nor could it have been authorized or legalized by any action of the board of directors; and for the further reason that the indictment upon which the defendant is being tried does not charge that it was done without the authority of the board of directors; but the court overruled the objection and allowed the above-mentioned record of the meeting of stock-

holders Jan'y 10th, 1893, and of their meeting Jan'y 9th, 1894, to be, and the same accordingly was, read in evidence to the jury; to which decision of the court the defendant excepted.

171 And the plaintiff, further to maintain the issues on its part, then called as a witness W. S. BULLOCK, who, being duly sworn, testified as follows:

Direct examination by Mr. CLARK:

Q. Where do you reside?
A. Ocala, Florida.
Q. Are you acquainted with the defendant, Enoch W. Agnew?
A. Yes, sir.
Q. I will get you to state if you bore any official relation to the First National Bank of Ocala during the year 1894.
A. I did.
Q. What relation?
A. Vice-president and director.
Q. Were you such director and vice-president in January, 1894?
A. Yes, sir; some portions of January.
Q. Were you in February of that year?
A. Yes, sir.
Q. In May of that year?
A. Yes, sir.
Q. I will get you to state to the jury were you familiar with the transactions of the board of directors of that bank.
A. Yes; I think so.
Q. Did you attend the meetings of directors while you were a director?
A. Every meeting, unless I was sick or out of the city. I think that occurred once; possibly twice.
Q. Did the board of directors of the First National Bank of Ocala, at any time during the month of February previous to the
172 12th day of February, 1894, consent to or authorize that $10,000 of the bonds of the Globe Phosphate Mining & Manufacturing Company might be entered to the credit of E. W. Agnew'-personal account on the books of that association?
A. Not at any meeting that I ever attended or ever heard of.
Q. Did you, as a director, ever give your consent that such entry might be made?
A. No, sir; I never knew of it until after the failure.
Q. I will ask you if, previous to the 12th day of May, 1894, the board of directors of the First National Bank of Ocala ever consented to or authorized the personal account of Enoch W. Agnew, of said bank, to be credited with $10,000 on account of 10 of the bonds of the Globe Phosphate Mining & Manufacturing Co.
A. Not at any meeting I attended, or didn't know anything about it.
Q. Did you, as a director or as vice-president, ever consent that such entry might be made?

A. Did not; knew nothing about it until after the failure.

Q. I will ask you if, to your knowledge, the board of directors of that bank ever authorized Mr. Agnew, its president, to purchase the $20,000 of the bonds of the Globe Phosphate Mining & Manufacturing Company that you have just been testifying about.

A. No, sir; not that I ever heard of or knew anything about.

Cross-examination.

173 By Mr. GUNBY:

Q. Did you at any time while you were connected with that bank know of any authority from the board of directors to Mr. Agnew to purchase any of the bonds for the bank of the Globe Phosphate Co.?

A. No, sir.

Q. Never heard of it?

A. No, sir.

Q. Will you state who was in the active management and control of the affairs of that bank as to its ordinary business transactions?

A. Mr. Agnew, I think.

Q. You know, do you not?

A. Yes, sir; Mr. Agnew. We were figure-head directors. I knew nothing about the bank; had every confidence in Mr. Agnew.

Q. Mr. Agnew's transactions, then, were considered the transactions of the bank, as far as the directors were concerned, to control everything?

A. So far as I was concerned, and so far as the acts of the other directors indicated, the same thing with them.

Q. Were you in the habit, as a board of directors, of passing upon or authorizing the purchase of any securities, bills, notes, bonds, bills of exchange—anything of that character?

A. Nothing of that character was ever submitted to the board of directors during the time I was connected with the bank. I have no recollection of it.

174 Q. Those things purchased by the bank and for the bank were absolutely in the control of its president, Mr. Agnew—in his management, I mean—were they not?

A. Mr. Agnew never consulted the board of directors about it that I ever heard of or knew of. He attended the directors' meetings occasionally; went through the formal meeting there a few minutes. Nobody ever questioned anything; took it for granted everything was all right.

Q. Is it or not a fact that you, as well as the other members of the board of directors, left the actual business management and running of the bank in the hands of its president, Mr. Agnew?

A. Yes, sir.

Q. As to the details of all transactions?

A. Yes, sir; it is a fact. We had nothing to do with the running of the bank or its details, and not consulted in any way, shape, or form. Mr. Agnew owned nearly all the stock, and we had unlimited confidence in him; he just managed the whole thing.

That was my feeling about it. I don't know how the other directors felt. That is about the way it was done.

By the COURT: How many directors were there?

A. Five, I think.

Mr. GUNBY:

Q. When did you know, as a matter of knowledge, that the First National Bank of Ocala was the owners of these $20,000 of Globe Phosphate Co.'s bonds?

175 A. After the appointment of Mr. J. K. McDonald as receiver in conversation with him, in talking over the bank's affairs—assets—after the failure of the bank. I can't give the exact date—some time in April or May, 1895.

Q. Were you in the habit of signing the reports of that bank to the Comptroller of the Currency in their statements to the Treasury Department?

A. Yes, sir.

Q. Do you know of your own recollection now whether or not among the assets of this bank as reported to the comptroller were listed specifically $20,000 of bonds of the Globe Phosphate Mining Company in the report that you signed?

A. No, sir; neither that nor any other specific item.

Q. You do not remember any specific item?

A. No, sir. Mr. Huber, cashier, and Mr. McIntyre and I went to them and said, "Look here, gentlemen, is this exactly correct as these books show?" and they opened the books and said, "Yes; here's the books; look for yourself," and I looked a little bit without much of an examination and was satisfied it was all right and I signed it.

Q. You do not recollect any specific assets of the bank at all?

A. No, sir; not a thing, unless I had a note there some time.

ISAAC STEVENS was then called as a witness by the plaintiff and, being duly sworn, testified as follows:

Direct examination by Mr. CLARK:

176 Q. Where do you reside?

A. Ocala, Florida.

Q. Do you know the defendant, Enoch W. Agnew?

A. Yes, sir.

Q. I will ask you if you bore any official relation to the First National Bank of Ocala during the year 1894.

A. One of the directors.

Q. Were you a director in February and May of that year?

A. I don't think I was acting until July, if I remember rightly.

Q. Were you elected at the meeting of the stockholders in January of that year—1894?

A. No, sir.

Q. You say you were a director, but you were not in February or May, you think, of that year?

A. No, sir; I don't think so.

Cross-examination.

By Mr. GUNBY:

Q. When did you become a director of the bank?
A. I think in July was the first time I was called upon to act; signed the reports.
Q. In July, 1894, was the first time you were called upon to sign a report of the bank's business?
A. I think so.

177 C. J. HUBER was then recalled as a witness for the plaintiff and testified as follows:

Direct examination by Mr. CLARK:

Q. I will get you to state what this is(handing book to witness).
A. This is a cash book.
Q. Cash book for what?
A. Cash book of the First National Bank of Ocala.
Q. Does that contain entries for the year 1894—that is, for January, February, and May of 1894?
A. Yes, sir.
Q. Who kept that book?
A. I was about that time.
Q. Where the book is open there, whose handwriting is that?
A. Jan'y 12th—this is Mr. McIntyre's.
Q. Turn to February 12th, whose handwriting is that?
A. That is Mr. McIntyre's.
Q. May 12th?
A. That is Mr. Mayo's.

ALEX. MCINTYRE was then recalled as a witness for the plaintiff and testified as follows:

Direct examination by Mr. CLARK:

Q. (Handing book to witness.) I will ask you to take that book and state what it is.
A. Cash Book Number 8 of the First National Bank of Ocala.
178 Q. Are the entries during January, 1894, and Feb'y, 1894, and May, 1894, contained in that book—the business for those months?
A. January, February, and a part of May seem to be.
Q. What part of May—to the 12th?
A. To May 21st.
Q. Turn to January 12th, 1894.

Witness turns.

Q. In whose handwriting are the entries under that date?
A. Mine.
Q. You made those entries?
A. Yes, sir.

Q. I will ask you to explain to the jury what that book is for—what is the purpose of it. You say it is a cash book. What entries are made in that book?

A. All entries are made in here that are not made to individual accounts.

Q. Are the stock and bonds accounts of the bank kept in that book?

A. Yes, sir; all accounts except individual deposits account.

Q. If the bank owned certain stock and securities, then the account of those stocks and securities would be kept in that book, would they?

A. It would be entered on this book.

Q. Is that the book of original entry, so far as the stocks and bonds are concerned?

179 A. It is the first entry on any book of anything of that kind.

Q. Now, I will get you to state to the jury whether there is any entry under date of January 12th, 1894, in that book of any of the bonds of the Globe Phosphate Mining & Manufacturing Co.

A. It is headed '93 at the top of the page.

Mr. FOSTER: What page?

A. Jan'y 12th.

Q. Headed '93 on Jan'y 12th?

A. Yes, sir.

Mr. CLARK:

Q. What is it in fact, Mr. McIntyre?

A. 1894.

Q. Then will you say that that 1893 is an error?

A. Yes, sir; should be 1894.

Q. Who made that error?

A. I did.

Q. What entry do you find under date of Jan'y 12th in reference to any bonds of the Globe Phosphate Mining & Manufacturing Co.?

A. Jan'y 12th I find charged on this book, account of other stocks and bonds, five bonds of the Globe Phosphate Mining & Manufacturing Co., numbers one to five, both inclusive, $1,000 each—$5,000.

Q. What does that entry mean? Will you explain it, please?

A. That entry on this book shows the bank on that day
180 paid out $5,000 to the value of five bonds of the Globe Phosphate Mining & Manufacturing Co., numbers 1 to 5, inclusive, at $1,000 each.

Q. That entry, then, shows that the bank paid $5,000 for those five bonds?

A. Yes, sir.

Q. Will you please turn to date of February 12th, 1894, and state if you find any entry there referring to bonds of the Globe Phosphate Mining & Manufacturing Co.?

A. Yes, sir; on February 12th, 1894.

Q. In whose handwriting is that?

A. Mine.

Q. You kept that?

A. I entered it on that day.

Q. What entry do you find there?

A. I find charged on this book on that day to bond account, Globe Phosphate Mining & Manufacturing Co., numbers 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, $10,000.

Q. Were those bonds ever in your possession?

A. Yes, sir.

Q. I will get you to look at the bonds handed you, and state whether or not those are the bonds referred to in that entry (handing bonds to witness).

A. I don't suppose there is any doubt about these being the bonds. They answer to the description.

181 By the COURT: Then you say they are the bonds?

A. I should say they are the same numbers, same amount, same bonds, as far as I know.

Mr. CLARK:

Q. Will you read the entry now?

A. Bond account, Globe Phosphate Mining & Manufacturing Co., number 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, $10,000.

Q. What does that entry mean?

A. That means the bank on that day took those bonds at that price; gave the value of that $10,000 for them.

Q. You mean to say the bank came into possession of those ten bonds on that day at a cost of $10,000?

A. Yes, sir.

Q. $1,000 each?

A. Yes, sir.

The plaintiff offered in evidence the 10 bonds above mentioned, and same filed in evidence.

Q. I will ask you to turn to date of May 12th, 1894. In whose handwriting are the entries under that date?

A. Mr. Mayo.

Q. I will ask you, referring to the entry of Jan'y 12th, 1894, of the $5,000 of bonds, and the entry of Feb'y 12th, 1894, of $10,000 of bonds, if the bank carried those bonds into its assets at the price named, $10,000 for the ten and $5,000 for the other five.

A. Yes, sir; the bank carried them into their assets at par value.

182 J. K. MCDONALD was then recalled as a witness for the plaintiff and testified as follows:

Direct examination by Mr. CLARK:

Q. I will ask you if, when you took charge of the bank—the First National Bank of Ocala—on the 22nd of April, 1895, to which you have testified—you stated that you made a thorough examination of the books and papers of that bank to ascertain its assets and liabilities—I will ask you to state if you saw an entry in stock and bonds account of $5,000, which has just been testified to by Mr. McIntyre.

A. Yes, sir; I saw that entry.

Q. I will ask you if you made an examination to ascertain the facts in reference to the transaction—the purchase of those bonds.

A. Yes, sir. I made a very thorough examination to ascertain the facts with reference to the purchase of the bonds.

Q. I will ask you to state what facts you ascertained from the books and records of the bank in reference to that transaction.

A. Only from the books of record. When I found the charge to the stocks & bonds account $5,000 my next investigation was to ascertain how those bonds came into the possession of the bank, and that was the debit entry to stock & bonds account. I then looked for a credit entry to offset it to ascertain how the bonds came into the possession of the bank.

Q. I will ask you, when you find a debit entry of that kind, must there of necessity be a corresponding credit entry?

183 A. Unless actual cash was paid out over the counter there must be another entry to offset it.

Q. Go on.

A. The only credit entry I found upon that date was the credit of $5,000 on the account of Mr. E. W. Agnew, the president of the bank, his personal account, but in my investigation—my examination—of the deposit slips for that date I found all the deposit slips represented by the deposits on the depositors' ledger except that one; it could not be found.

Q. Did you make a thorough search?

A. Yes, sir.

Q. Through the bank?

A. Through the deposit slips—that is, they were kept according to dates, each date kept separately in a bundle in the vault, and I made a thorough search through those slips and did not find that particular one.

Q. You say you found a credit on the personal account of Mr. E. W. Agnew as of that date for $5,000?

A. Yes, sir; to the best of my recollection.

Q. After having made this investigation, ascertained these facts you testified to, did you have any conversation with the defendant, Mr. Agnew, in reference to these $5,000 of bonds?

A. No, sir; not with reference to that particular $5,000 in bonds.

Q. Did you have any conversation with him in reference to the bonds of the Globe Phosphate Mining and Manufacturing

184 Company held by the bank?

A. Yes, sir.

Q. Will you please state what that was?

A. In my investigation as to the value of the securities held by the bank I asked Mr. Agnew—at that time I was not fully sure that the state of facts that I now testify to existed in regard to the manner in which the bonds came into the possession of the bank, and I was then getting at information which would enable me to arrive at the actual condition of the bank—that is, what its assets were worth—and I asked Mr. Agnew with regard to the $40,000 of Globe Phosphate Mining & Manufacturing Co. bonds held by the bank—

a great many questions. Among them I asked him where the bank got these bonds; from whom the bank purchased the bonds. He said the bank purchased them from the Globe Phosphate Mining & Manufacturing Co. I then asked him what price the bank paid the Globe Phosphate Co. for the bonds, and his reply was that the bank paid the phosphate Co. par for these $40,000 bonds.

Q. Was there anything further stated in reference to them by him?

A. He did state at the same time that he could sell the bonds within a week if he had them. They were then pledged in Chicago and New York as collateral security on the bank's liabilities, and he said during that conversation that he could sell the bonds at par within a week, and I replied that if he would find a purchaser I would get the bonds released from the pledge, and begged and insisted on his selling them at even 50 cents or less if he could, but he never did do it.

185 B. F. MAYO was then recalled as a witness for the plaintiff and testified as follows:

Direct examination by Mr. CLARK:

Q. Take that book and state what that book is (indicating).

A. That is the cash book.

Q. Whose cash book?

A. First National Bank of Ocala.

Q. I will get you to turn to the page in that book of the date of May 12th, 1894.

Witness turns.

Q. Whose handwriting are those entries in?

A. In my writing.

Q. You made those entries?

A. Yes, sir.

Q. I will ask you, is there any entry under date of May 12th, 1894, in that book in reference to any bonds of the Globe Phosphate Mining & Manufacturing Co.?

A. On the debit side of the book there is.

Q. Do you find an entry referring to these bonds?

A. Yes, sir.

Q. What is that entry?

A. $10,000.

Q. The whole entry?

A. Account of other stocks and bonds, Globe Phosphate Mining & Manufacturing Co., number 61, 63, 65, 67, 69, 71, 73, 75, 77, and 79, $10,000—the total amount.

186 Q. Did you make that entry?

A. Yes, sir.

Q. Did you have those bonds in your possession?

A. No, sir.

Q. At the time you made the entry?

A. No, sir.

Q. How did you make the entry? Where did you get——

A. When the bank closed each day's business is written up from the slips put on different files for the book-keeper to write up.

Q. And these contained the numbers?

A. Yes, sir.

Q. Did you ever have the bonds?

A. No, sir.

Mr. FOSTER: Are they written up from slips made by yourself or some one else?

A. Written up by some one else; the slips were made up by some one else.

Mr. CLARK:

Q. These numbers that you have read there are the correct numbers as appeared upon these slips, are they?

A. Yes, sir.

Q. What does that entry mean?

A. That means—it is put on the side of the book which represents assets of the bank.

Q. Then it means that those bonds were held by the bank as part of its assets?

A. Yes, sir.

187 Q. At that time?

A. Yes, sir.

Q. At the value of $10,000?

A. At the value of $10,000.

Q. And the numbers you say are what?

A. 61, 63, 65, 67, 69, 71, 73, 75, 77, and 79.

The plaintiff offers in evidence the bonds numbered as above of the Globe Phosphate Mining & Mfg. Co., and same are filed in evidence.

(Court adjourns to 10 a. m., Monday, Jan'y 6th.)

(Court convened at 10 a. m., Monday, pursuant to adjournment.)

The plaintiff offered in evidence duly certified copy of the articles of incorporation of the Globe Phosphate Mining & Manufacturing Co., and same are filed in evidence.

The plaintiff, further to maintain the issues on its part, then called as a witness JAMES A. GRIFFIN, who, being duly sworn, testified as follows:

Direct examination by Mr. CLARK:

Q. Where do you reside?

A. Tampa, Florida,

Q. Where did you reside in the early part of 1895?

A. In Ocala, Florida.

188 Q. What business were you engaged in in Ocala at that time?

A. I was connected with the First National Bank of Ocala.

Q. Who was president of that bank at that time?

A. Mr. Agnew; the defendant here, Mr. E. W. Agnew.
Q. What position did you hold in that bank?
A. Individual book-keeper.
Q. Please step to this table and look at this book. I will ask you what book is that.
A. That is the ledger, I suppose.
Q. Do you know what it is?
A. Individual ledger of the bank.
Q. What accounts, if any, does that book show? Explain what it is.
A. Individual ledger is the individual deposits of depositors of the bank—the accounts of individuals.
Q. Shows the accounts of depositors in that bank?
A. Yes, sir.
Q. I will get you to turn in that book to the account of Mr. E. W. Agnew, the defendant.
By the COURT: You say the individual ledger of the First National Bank of Ocala?
A. Yes, sir.

Mr. CLARK:

Q. I will ask you first what letters does that ledger include—the accounts from what letter to what letter?
A. From A to L, inclusive.
189 Q. What does that mean?
A. It simply means all of the bank's depositors whose first initial begin- with the letter A, B, C, &c., down to L, inclusive.
Q. The first initial of whose surname begins with A to L?
A. Yes, or the first name of the members of a firm.
Q. Have you the account of Mr. E. W. Agnew before you?
A. Yes, sir.
Q. Who kept that record; whose handwriting is that?
A. I did.
Q. That is your handwriting?
A. Yes, sir.
Q. I will get you to state if there is an entry there to the credit of Mr. E. W. Agnew as of the 15th of April, 1895.
A. Yes, sir; there are three credits.
Q. What are those?
A. There's one credit of $5,000, another credit of $5,000, and one of $9,350.
Q. Read that entry referring to the $9,350.
A. It simply is a credit to the account of E. W. Agnew—deposit $9,350.
Q. What does that mean; what does that indicate?
A. It indicates that his account has been credited with $9,350.
Q. That he had deposited that much on that day?

The defendant objected to this question on the ground that it is leading.

By the COURT: You may ask what a credit is.

190 Mr. CLARK:

Q. What is a credit? What do you mean by that?

A. A credit represents money or checks or something deposited for the benefit of the depositor's account, to his account credited.

Q. What is that 9,350, cents or dollars?

A. Dollars.

Q. What does that indicate as it appears upon that book?

A. It indicates that Mr. Agnew had deposited in the bank either money, check, or equivalent of money to the amount of $9,350 to the benefit of his account.

Q. On that day, you say, you made that entry?

A. Yes, sir; this entry.

Q. From what did you make that entry?

A. I suppose from the deposit slip.

Q. Did you make that entry in the regular course of business, in the line of your duty as keeper of that book of accounts?

A. Yes, sir.

Q. (Handing witness deposit slip introduced in evidence, filed as Exhibit C.) I will ask you to look at that paper and state whether or not you recognize it.

A. Well, the amounts compare. I couldn't say that I recognize the ticket.

Q. You do not recognize the piece of paper, but you say the amounts compare?

A. The amounts compare, but the date does not.

Q. How do you know what is the date?

191 A. The date the ticket bears is the 4th.

Q. 4th of what?

A. It does not say; it just says 4, '95.

Q. Does that refer to the month or the day of the month, that 4?

A. I don't know.

Q. Is there any other entry on that account to Mr. Agnew's credit as of that date for $9,350 except that one you just testified about?

A. I don't know without I look through the account.

Q. Of that date?

A. No; not of April 15th.

Q. Is there any other credit to his account for $9,350 during the month of April as shown upon the accounts—books?

Witness examines.

A. No, sir; there is no other credit for that amount during the month of April, 1895.

Q. Were you connected with the bank in any capacity in February and May, 1894?

A. Yes, sir.

Q. What position did you hold at that time with that bank?

A. I think at that time I was individual book-keeper.

Mr. FOSTER: Did you say you were individual book-keeper then?

A. I think so; the records of the bank will show.

Mr. CLARK:

Q. The entry of $9,350 as of the date April 15, 1895, that you have testified as made by yourself, and made in the regular
192 course of business in the line of your employment; I will ask you if you would have made that entry unless you had been furnished with a deposit slip such as has been exhibited to you.

A. No; the book-keeper usually records only the deposit slips that are passed him in the ordinary course of business.

By the COURT: Would you have made such an entry in the book there if you had not had some deposit slip or something to make it from in your regular course of business?

A. No.

Mr. CLARK:

Q. I will get you to come here again and state what that is (referring to another book).

A. That is also an individual deposit ledger of the First National Bank of Ocala, Florida.

Q. From what letter to what letter?

A. From A to M, including A and including L.

Q. I will get you to turn to the account of Mr. E. W. Agnew, the defendant, as of the date of February 12th, 1894, if it is in that book.

A. Yes, sir.

Q. In whose handwriting is that?

A. It is mine.

Q. You kept that record?

A. Yes, sir.

Q. I will ask you if there is any entry to the credit of Mr.
193 Agnew, the defendant, as of the date of February 12th, 1894.

A. Yes, sir; there are two credits.

Q. What are they?

A. One of $822.51, one of $1,750.22.

Q. Did you make that entry of $822.51?

A. Yes, sir.

Q. Was that entry made by you in the regular course of business and in the line of your employment as the keeper of that record?

A. Yes, sir.

Q. (Handing witness paper filed as Exhibit K.) Mr. Griffin, I will get you to state if you recognize that paper that I have just handed you.

A. Yes; this is the deposit ticket of that date.

Q. The deposit ticket from which you made that entry?

A. I suppose it is.

Q. Would you have made that entry if you had not been furnished with a deposit ticket similar to the one you are now looking at?

A. No, sir.

Q. I will ask you to look through the account of Mr. Agnew for

the month of February, 1894, and state whether or not there is any other entry to his credit of $822.51.

A. No, sir; there are none.

Q. I will get you to turn now to the account of Mr. Agnew, the defendant, as of the date of May 12th, 1894.

Witness turns.

194 Q. In whose handwriting is that?

A. Mine.

Q. You kept that?

A. Yes, sir.

Q. Do you find any entry to the credit of Mr. Agnew's account as of that date, May 12th, 1894?

A. Yes, sir.

Q. What is it?

A. I find one credit of $10,000.

Q. Read the entry.

A. E. W. Agnew, credited by deposit $10,000.

Q. (Handing paper to witness filed as Exhibit J.) I will get you to examine that paper and state whether or not you recognize it.

A. It is a deposit ticket of like amount, but not of same date.

Q. Would you have made the entry to the credit of Mr. Agnew, which you have just read, if you had not been furnished with a deposit ticket similar to the one now before you?

A. No, sir.

Q. I will get you to look through his account in the month of May and state whether or not there is any other credit to his account during that month for the sum of $10,000.

A. No, sir; there are none.

Q. I will get you to turn to Mr. Agnew's, the defendant'-, account as of the date of 12th January, 1894.

Witness turns.

195 Q. In whose handwriting is that?

A. It is not mine.

Q. Do you know whose it is?

A. I think it is the handwriting of Mr. Massey.

The plaintiff offered in evidence the account of Mr. Agnew up to date of April 15th, 1895, as contained in Individual Ledger No. 18, from A to L inclusive; also Individual Ledger No. 14 of the First National Bank of Ocala, A to M, inclusive, showing the account of Mr. E. W. Agnew as of dates of February 12th, 1894, and May 12th, 1894.

Mr. GUNBY: We are not objecting to the admissibility of the last-named account, which is offered, and I think properly offered, for the purpose of showing the sale by Mr. Agnew of the bonds of the Globe Phosphate Co. to the bank on that date and the putting of the money arising from that sale to his account.

The defendant objected to the admissibility in evidence of the entry of April 15th, 1895, on the ground that the evidence of the witness and the books produced in evidence show, instead of a false

entry, that an accurate and proper entry of the transaction as it occurred was made.

But the court overruled the objection, stating as follows: "The books may be introduced in evidence to show that amount has been carried and established to his individual account;" to
196 which decision of the court the defendant excepted.

Mr. CLARK:

Q. Mr. Griffin, we desire you to turn to Mr. Agnew's account again as of the date of April 15th, 1895.

Witness turns.

Q. I will ask you to state to the jury what was the condition of his account, as shown by that record, on that day previous to the entry of the credit of $9,350.

A. You mean at the opening of business of April?

Q. Yes.

A. The account, as shown by the ledger, is overdrawn $1,847.39.

Q. At the opening of business on April 15th, 1895, as shown on that record?

A. Yes, sir.

Q. Did that record show at that time cash items that had not been entered upon the record there?

A. No; the record couldn't show items not entered up.

Q. I will get you to look at that paper (filed in evidence as Exhibit E) and state whether or not these items had been entered as a charge against Mr. Agnew on that account at the opening of business on April 15th, 1895.

The defendant objected to this testimony on the ground that the evidence shows this slip offered to the witness bears date April 16th on its face—a day after the closing of the books here offered—and, further, no charge in the indictment as to that; but the court
197 overruled the objection and allowed the witness to testify; to which decision the defendant excepted.

Mr. CLARK:

Q. I will ask you if that record shows that at the opening of business April 15th, 1895, the items upon the slip of paper handed you, filed in evidence as Exhibit E, had been charged to Mr. Agnew's account.

A. No, sir.

Cross-examination.

By Mr. GUNBY:

Q. At the opening of business on that day you say Mr. Agnew's account was overdrawn $1,800?

A. Yes, sir.

Q. State how much credit was placed to his account that day outside of the slip mentioned.

A. $10,000—two deposits of $5,000 each.

Q. You say that the amounts shown in the slip which was exhibited to you had not been charged up to his account at that time?

A. You mean the debit slip?

Q. The debit——

A. No, sir.

Q. Did you have any other duties to perform in the premises—keeping those books—except to charge up such items as came to you from the proper sources of the bank representing the
198 transactions of the day?

A. No, sir; no other; not in my regular duties, unless I was called.

Q. Your duty as book-keeper, then, was to charge to debit and credit the accounts of depositors on the individual ledger as they appeared from the teller's desk, was it not?

A. Yes, sir.

GEORGE W. MARTIN was then called as a witness by the plaintiff and, being duly sworn, testified as follows:

Direct examination by Mr. CLARK:

Q. Where do you reside?

A. Ocala, Florida.

Q. How long have you lived there?

A. About 13 years.

Q. What business are you engaged in in Ocala?

A. I have charge of the hardware department of the firm of H. B. Masters.

Q. What business were you engaged in during the year 1894?

A. I was in the employ of E. W. Agnew & Co. I had the same position, I think, then that I have now—in 1894.

Q. What Agnew was that?

A. The one in court; the defendant here.

Q. What business were you engaged in during the month of February, 1894?
199 A. I was in the same business.

Q. Working for E. W. Agnew & Co.?

A. Yes, sir; have been in the employ of the house now nearly eleven years.

Q. I will ask you what were you engaged in in February, 1895—last year.

A. Same place; same business.

Q. On February 14th, 1895, what was your financial condition?

The defendant objected to this question on the ground that the predicate is not laid.

By the COURT: I can't see the relevancy of it. I presume the Attorney would not ask this question without some grounds.

Mr. CLARK:

Q. I will ask you to look at this paper (handing paper to witness). Do you recognize that paper?

A. Yes, sir.

Q. Is that your signature attached to it?

A. No, sir; that is not my signature. That is my signature, but I did not write it. That is my name, but I didn't write it.

Q. You say you recognize it?

A. I recognize it as a note that I gave.

Q. Is that a true copy of the note that you gave?

A. Yes, sir; as far as I see, it is; might be a little more on account of interest or something of that kind.

Q. I will get the original. I will get you to look at that paper and state whether you recognize it or not (handing another paper to witness).

200 A. Yes, sir.

Q. Is that your signature? You signed that?

A. Yes, sir.

Q. I will ask you if at the time you—I will ask you first, at the time you executed that note to whom did you deliver it?

A. Mr. Agnew, the defendant here.

Q. At the time you did execute and deliver that note to Mr. Agnew did you receive from him or from the First National Bank of Ocala any consideration for the execution and delivery of that note?

The defendant objected to this question as irrelevant, immaterial, and not tending to prove the issues in this case, and would tend to confuse the minds of the jury as to the real issue.

Mr. GUNBY: I ask the court to have the jury withdrawn pending the argument of the objection.

Jury retires from the court-room.

By the COURT: The question pending is that whether at the time of signing this note he received any consideration for signing it, is it not?

Mr. CLARK: Yes, sir.

The court overruled the objection and allowed the question to be asked; to which decision the defendant excepted.

Jury is recalled to court-room.

201 J. K. MCDONALD was then recalled as a witness for the plaintiff and testified as follows:

Direct examination:

Q. You have testified you have had a great deal of experience in the banking business—been a national bank examiner and are yet, are you?

A. Yes, sir.

Q. I will ask you to state to the jury if a check for $3,400, payable to a national bank by name, payable to the order of that bank, should come into the bank in due course of business and should be thereupon credited to the personal account of the president of that bank and afterwards should be applied to the payment of the bank's indebtedness, what effect that credit to the personal account of the president would have.

A. It would have the effect to divert the funds of the bank from their legitimate purpose—use; if he did not have any right or title to the check, the check belonged to the bank; then it would have the effect of making a credit in his account to which he was not entitled.

Q. If that check was the property of the bank, in the case that I have stated to you, and was credited to the personal account of the president of the bank in the first instance, and afterwards, secondly, was applied to the payment of the bank's indebtedness in another direction, what benefit would the bank have derived from that check?

A. None whatever; the check being the property of the
202 bank in the first place, and coming into the possession of the bank through an improper source, and then being applied to the payment of the bank's indebtedness, the bank would receive no benefit whatever from the check, because when it was credited to the account of a person who is not entitled to it the bank thereby paid so much money for the check, and when it paid it out on its own indebtedness it simply liquidated so much of its own indebtedness with a check that had come in for which it had paid dollars for dollars to another person.

Q. Then I will ask you if the bank, in the first instance, had paid value for the check, and after it came in it had been credited to the personal account of another, as I have described, would the bank in effect be paying for the check its value twice?

A. I don't exactly catch your meaning.

Q. If, in the first instance, before the check ever came to the bank, the bank had paid value for it, and then upon its arrival at the bank it was credited up to the personal account of some officer of the bank, then would the bank in effect be paying twice the value for the check?

A. If you take in the original asset for which the bank paid and for which the check comes in as a credit properly, then your question is correct, it would be paying twice for the same thing.

Q. In your experience in banking and as a national bank examiner, have you had much experience in the handling of bonds and other securities?

203 A. Yes, sir; a great deal.

Q. You stated that when you took charge of this bank you came into possession of these Globe Phosphate Mining & Manufacturing Co. bonds that have been offered in evidence here.

A. I didn't come into the actual possession of the bonds, but they were carried as assets of the bank. They were not in the bank. They had been hypothecated as securities with other banks, but I took possession of the receipts—found them as assets and took their receipts.

Q. I will ask you if, as receiver of that bank, finding these bonds as among the assets of the bank, you made any examination into their value.

A. Yes, sir.

Q. I will ask you to state from your experience in the handling

of such securities what, in your opinion, was the value of those bonds at the time you took possession of the bank—April, 1895.

The defendant objected to this question on the ground that the value of the bonds in April, 1895, is not in issue and cannot be made an issue under this indictment. Objection sustained.

Mr. CLARK:

Q. Can you from the investigation you made and from your knowledge of such securities give an opinion as to their value in the early part of 1894?

The defendant objected to this question because it is a con-
204 crete question, and on the further ground that an expert cannot testify as to the value of securities. The value of securities can be proved by the knowledge of the worth of that particular security only.

By the COURT: I think this matter has been testified to in a manner which is by far better evidence than this witness can give.

Mr. CLARK: I will put this question, then: I will ask you if, from your investigation of these bonds—the bonds of the Globe Phosphate Mining & Manufacturing Co.—you can express an opinion as to their value in the spring of 1894.

The defendant objected to this question on grounds above stated.

By the COURT: I don't think that would be the best evidence. I don't think that would be admissible.

Objection sustained.

Cross-examination:

Q. You stated that the result of the charging of a check which belonged to a bank to an individual other than the bank——

A. Crediting, you meant to say.

Q. Crediting to the account of an individual other than the bank, and the payment of the actual money at the time to liquidate to that extent the debt of the bank, as I understand you, would leave the bank exactly in the same position as if the transaction had not occurred.

A. I did not mean to say exactly in the same position.

205 Q. I mean as to that check.

A. As to that check; yes, sir; as to the particular money paid out upon the check by the crediting of that check to the wrong account.

Q. Then, when you stated, in reply to Mr. Clark's question upon the hypothetical case, that, taking the whole transaction from the ownership of the security by the bank up to the payment of the debt of the bank, if the entire entry had been made that the bank would have paid it twice, it was incorrect, was it not?

A. No; my meaning was this: that in the first place the bank paid out value received for the stocks held and for which this check

was received; then, in the second place, when the credit was entered to an account other than the stocks and securities account the bank paid for those stocks again; the bank had paid twice for the same security.

Q. What effect upon the payment twice would it have if immediately thereafter, the bank having paid for them twice, the money was used to pay a legitimate debt of the bank? Wouldn't it bring it back to the same proposition again?

A. No, sir; the effect then would be that the bank had paid twice for the same security or stock the second time, it coming into the hands of the bank, not in the proper manner, but through a wrong account than the one through which it should come into the possession of the bank, consequently the bank has paid twice for the check referred to, paid twice for the check referred to and has received the value of that check but once.

206 Q. Now, I am going to ask you, for the purpose of explanation, with reference to this particular transaction, with which you are familiar, in order to show the jury clearly what you mean by your answer to the hypothetical question.

A. Yes, sir.

Q. Now, what difference is there, as far as the bank is concerned, or would there have been, if the $3,400 worth—because that is what it brought—of the Marion Phosphate stock had been taken and paid over to the National Bank of the State of Florida in liquidation of its debt as the bank then stood, and, in addition to that, a simple credit of $3,400 should have been made to the account of Mr. Agnew without any transaction behind it? Would not it have been the same thing as it now is?

A. You mean to say that if this $3,400 check had been credited to stocks and securities account?

Q. No; I do not mean if there was any credit at all. I mean if the stocks & securities, instead of having been sold, had been taken out of the assets of the bank and used to pay a bank debt, that would have been a balance, would it not?

A. Certainly, after the amount had been credited to stocks and securities account.

Q. And if the same amount had been put to the credit of Mr. Agnew, it would simply have shown that Mr. Agnew had $3,400.00 in bank, would it not?

A. It would have shown——

Q. That the bank owed him that much?

A. Yes; that it had that much which it was not entitled to.

207 Q. Would not the effect of that credit be shown to the corporation or to the bank only in case the bank was compelled to pay that credit?

A. I don't exactly catch your meaning.

Q. My meaning is this: Could not the $3,400 which was credited to Mr. Agnew have been corrected as an absolute mistake on the books of the bank and the accounts properly adjusted without injury to the bank?

A. It could have been done by charging Mr. Agnew's account $3,400 and crediting stocks and bonds account $3,400.

Q. Without the handling or change of any actual funds of the bank whatever?

A. Yes; but with the effect of placing $3,400 assets into the bank that it had not before the change.

Q. Would not that correction have simply shown what actually occurred—that $3,400 of the stocks and bonds belonging to the bank had been sold to pay a bank debt and the balance was equal?

A. As I understand, they were not sold to pay a bank debt; they were simply sold.

Q. You can answer my question. Would it not have shown that if the transaction had been thus credited that the bonds were sold and the proceeds used to pay a bank debt?

A. Yes, sir.

Q. And the only thing necessary to have shown that state of facts would have been a proper entry charging Mr. Agnew with the $3,400?

A. It would have been an entry charging Mr. Agnew with
208 $3,400 and crediting stocks & bonds; that would have corrected the wrong entry in the first place.

By a JUROR: I would like the last witness put on the stand again. I would like to ask him a question.

J. K. MCDONALD was then recalled as a witness for the plaintiff and testified as follows:

By JUROR: If I understood the question, you said that there were $3,400 worth of bonds?

A. Stocks.

By JUROR: Stocks or bonds.

A. Yes, sir.

By JUROR: And they were sold and this money was used for a private individual?

A. Yes, sir.

By the JUROR: How the bank would have lost it, that is what I did not catch.

A. The idea is this, that if he had replaced the money or made a credit to stocks and bonds account and charged himself with $3,400 that would have corrected the books, or if he had paid in so much money, cash $3,400, and credited stocks and securities it would have corrected the books; he could have corrected the books either by making a charge to his own account $3,400 or by paying $3,400 in cash in and crediting stocks and bonds account. As the
209 matter now stands, stocks & bonds account do not show any credit for that $3,400 at all.

By JUROR: This $3,400 was not placed back upon the credit to the stock?

A. No.

By the COURT: That $3,400 still stood to the credit of Mr. Agnew?

A. Still stood—when I turned the affairs of the bank over to my successor, in August, it still stood to the credit of Mr. Agnew, and still stood as a charge, as an asset, on the stocks and bonds account.

J. A. GRIFFIN was then recalled as a witness for the plaintiff and testified as follows:

Direct examination by Mr. CLARK:

Q. I will get you to turn to the account of Mr. E. W. Agnew on that individual ledger of January 12th, 1894. In whose handwriting is that?
A. I think it is Mr. Massey's.
Q. It is not yours?
A. No, sir.

Mr. CLARK: That book, however, has been admitted in evidence.
By the COURT: That portion of it relating to Mr. Agnew's individual account.

Mr. CLARK:

Q. I will ask you to state what condition, on Jan'y 12th,
210 1894, the account of Mr. Agnew was in at the bank.
At the close of the business?
Q. At the opening of business.
A. Shows $7,088.36 overdrawn.
Q. What do you mean by overdrawn?
A. A debit balance.
Q. You mean he owned the bank that much?
A. Yes, sir.
Q. Turn to February 12th, 1894.

Witness turns.

A. What was the condition of his account at that time, at the opening of business?
A. Account as shown by this book, he is overdrawn $980.92.
Q. I will get you to turn to date of May 12th, 1894.

Witness turns.

Q. What was the condition of his personal account at the opening of business on that date?
A. Overdrawn $161.77.

Cross-examination:

Q. From what did you take those items; from what were those items taken?
A. The credits?
Q. From what did you get the — or did the party who made those get those facts? Is that an original entry or copied from some thing else?
211 A. The balance is shown by the condition of the account.
Q. Are the entries which show that balance entered there or are they taken from some other?

A. The debits and credits are entered from checks and deposits, of course.

Q. From slips?

A. From deposit slips and from checks or debit slips.

The defendant objected to all of the evidence of any items taken from deposit slips, the handwriting of the entry testified to not being in the handwriting of the witness and not an original entry, and that the slips are the best evidence; but the court overruled the objection; to which decision of the court the defendant excepted.

And thereupon the plaintiff rested.

The defendant, to maintain the issues on his part, then called as a witness CHARLES M. BROWN, who, being sworn, testified as follows:

Direct examination by Mr. GUNBY:

Q. Where do you reside?

A. Ocala, Florida.

Q. How long have you lived there?

A. About 48 years.

Q. You are a native, then, are you?

A. Almost.

212 Q. What is your business?

A. My business is principally dealing in real estate and orange groves.

Q. Have you had any experience in the purchasing, examining, and valueing of phosphate lands in Florida?

A. I have.

Q. How long have you had that experience?

A. About two years.

Q. Did you at any time examine and value any land in Marion county as phosphate land?

A. Yes, sir.

Q. Did you examine and value any lands in Citrus county?

A. Yes, sir.

Q. Are you acquainted with and were you acquainted in 1894—the spring of 1894—with the value and character of the lands belonging at that time to the Globe Phosphate Mining Co.?

A. I was and am still acquainted with those lands and I placed a value on them at one time—that is, I gave my idea of their value on a basis of one dollar per ton—that is, if phosphate rock was worth one dollar a ton, then I could value the property.

Q. Will you state how much of that land you put your valuation or estimate upon at that time?

A. I couldn't positively state whether it was on 271 acres or on the whole tract, which covers about 4 or 5,000 acres, or did, at one time, about 5,000 acres.

213 Q. If you know the prices at which phosphate lands were selling in the spring of 1894, and are acquainted with their values, and if you know the character and value of the lands owned by the Globe Phosphate Mining Company at that time, state to the

jury what, in your opinion, was the value of those lands in the spring of 1894, the entire property.

A. I could not place any estimate on phosphate land in 1894, other than so much per ton. If rock was worth in 1894 a dollar a ton net, why those lands are very valuable and all other lands in that vicinity—phosphate lands; but as for me to state what the lands were really worth without taking the value of the rock into consideration or placing some price per ton upon the rock, I couldn't say, but at an estimate of $1.00 a ton those lands were valuable.

Q. How valuable, in your opinion?

A. The whole land?

Q. Yes; the whole land.

A. Would have been well worth, at a dollar a ton, $200,000.00, because there is certainly 200,000 tons of rock.

Q. You made an examination of the land, did you not?

A. Some of it, yes, sir; the principal pieces.

Q. And you concluded that at a dollar a ton the land, for phosphate purposes, was worth $200,000?

A. Yes, sir; I conclude that yet.

Q. You think yet it is worth that?

A. Yes, sir; there's 200,000 tons of rock on it I know as well as anything I don't see because I pitted it well.

214 Cross-examination:

Q. Phosphate land and any other land is worth only what it will bring in open market, is it not?

A. I cannot agree with you there. I don't think so.

Q. You don't?

A. The market may be depressed.

Q. But what is your idea, then, as to what is the value of property?

A. I don't think there is any value to property right now.

Q. Then it is not worth anything, is it?

A. I don't think there is any value to any property right now.

Q. Then, if there is a time when there is no value to any property, then the property is not worth anything?

A. I didn't say that. I said at a dollar a ton——

Q. I will ask you again, if it is not true that the value of any property, whether it be phosphate land or any other land, is what that property will bring in the open market when offered for sale?

A. I don't think so.

Q. You say your estimate is based upon the supposition that they could obtain a dollar a ton for the phosphate, net?

A. No, sir; not that they could obtain a dollar a ton, but if they could.

Q. Upon the supposition; that is what I said.

A. If rock is worth a dollar a ton.

Q. Now, I will ask you if in point of fact phosphate rock in
215 the spring of 1894 could be mined at a net profit of a dollar a ton, and was it so mined?

A. That would be owing altogether to the deposit.

Q. I am asking if it was so done. Do you know of any instance where it was so done?

A. Not of my own personal knowledge. I have heard that such things were done, but I don't know.

Q. Is it not true that in the spring of 1894 there was hardly any market for phosphate rock in Florida?

A. I think so.

Q. You think what?

A. That there was no market much; that it was very low.

Q. Now, you say you examined some of this property and you don't know whether you examined a tract of 271 acres or the whole property?

A. No, sir; I said I placed a valuation on it, but I had forgotten whether it was on the whole tract or 271 acres of that tract.

Q. Are you acquainted with that 271 acres?

A. Perfectly.

Q. Was that considered the most valuable part of that tract?

A. Yes, sir.

Q. What relative value did that 271 acres bear to the balance of the tract?

A. That I couldn't state, because the remainder of the tract was not half so well pitted as that 271 acres.

216 Q. Isn't it true, and do you not know it to be true, as a phosphate man—a man having experience in the phosphate mining in Florida—that all of the phosphate companies, or the larger portion of them, have on their mine comparatively few acres of land valuable for phosphate as compared with the amount of property that they own?

A. Yes, sir; the deposits are generally small in comparison with the area of land; but then I have no experience in mining; mine has been simply purchasing—examining.

Q. I will get you to state to the jury how you know there was 200,000 tons of phosphate in that land.

A. I don't know; but from my experience in examining deposits, I believe that there was fully 200,000 —, or probably double that, from the deposits in sight.

Q. That is simply your opinion?

A. That is simply my opinion. My valuation is my opinion, to amount to anything.

Q. Then you can't come any nearer to it than from 200,000 to 400,000 tons?

A. No, sir; I could state of this 271 acres that it was the largest deposit that I ever found or saw.

Q. How deep did you bore into that land when you examined for phosphate?

A. I think the deepest pit was somewhere over 20 feet.

Q. How many pits were there on the 271 acres?

A. There was five pits, I think, on five acres, and only one pit on the remainder.

217 Q. Now, is it not a fact that deposits of phosphate are in pockets, and that sometimes in your investigation you get into what you think is a splendid deposit, large pocket, and when you begin to mine it you find out there is hardly any there?

A. That is true, but you can have a five-acre pocket as well as one-acre pocket.

Q. Were there any five-acre pockets on there?

A. Yes, sir.

Q. How many?

A. One.

Q. You judge that because there were five pits on five acres?

A. No, sir; because I rodded it all over probably for 20 feet, then pitted it.

Q. How deep was that phosphate?

A. There was a large outcrop in several places, and the overburden in the deepest places I suppose was 3 to 4 feet.

Q. Do you know anything as to the character of that phosphate, as to its quality?

A. Yes, sir.

Q. Are you a chemist?

A. No, sir.

Q. Analyzed any of it?

A. No, sir; we had a chemist with the company.

Q. Then of your own knowledge you don't know anything as to the value of the phosphate?

A. I only know it analyzed so much.

218 Q. You only know this man told you so much?

A. Yes; that is about the way we get all our information.

Q. Now, is it not true that phosphates in Florida vary very largely in value?

A. In value of what?

A. I mean in their commercial value. Some phosphates are of a very low grade, are they not?

A. Yes, sir; some analyze low in phosphate of lime and would not be so valuable; but this was high-grade phosphate.

Redirect examination:

Q. You rodded that five-acre deposit of phosphate to show its quantity and pitted it to show its quality, did you not?

A. Yes, sir.

Q. And you can testify that it was the finest body of phosphate you say that you have ever seen?

A. Yes, sir; that I ever saw—examined personally.

Q. And the five acres that you examined was the largest and best solid deposit of phosphate you had ever examined?

A. Yes, sir.

Q. Was it hard or soft rock?

A. Principally bowlder—hard rock.

Q. Which is the most valuable phosphate rock commercially in price, hard or soft rock?

A. Well, sir, I have not had much experience. I know the hard rock analyzes the highest as a general thing, but sometimes we find very fine pebble phosphate; but commercially I don't
219 know which is the best.

(Court adjourns to 2.30 p. m.)
(Court convenes at 2.30 p. m., pursuant to adjournment.)

The defendant, further to maintain the issues on his part, then called as a witness D. P. UPSON, who, being sworn, testified as follows:

Direct examination by Mr. GUNBY:

Q. Where do you reside?
A. Jacksonville.
Q. What is your business?
A. Machinery business.
Q. Are you acquainted and were you acquainted in the last two years with the phosphate property in Citrus county owned by the Globe Phosphate Mining Co.?
A. I was acquainted with part of it.
Q. Were you acquainted and familiar with the part of it on which was worked and pitted phosphate deposits?
A. I have been on it a good deal. I furnished the machinery for it.
Q. Have you had a fair opportunity for its examination?
A. I think I have.
Q. Have you at any time placed upon it a valuation as to the value of that deposit?
220 A. Yes; about two years ago, at what I thought it was worth, and I placed a value on it at that time.
Q. What was that valuation?
A. I said at that time—remarked that I thought it was a very cheap property at $100,000.
Q. That was that particular deposit?
A. Yes, sir.
Q. Were you acquainted with the values of the lands owned by the company outside of that particular location?
A. No, sir; I was not; I was over the property somewhat, but not with a view to looking——
Q. Not sufficient to estimate its value?
A. No, sir.

Cross-examination:

Q. Have you had much experience with phosphate lands?
A. I have been over a great deal.
Q. Have you ever had any experience in operating a phosphate mining plant?
A. Somewhat. I was director in one of the mines and was out there quite a bit.

Q. Did you have anything to do with the active management of its operation?

A. No more than to go there occasionally and look it over.

Q. Have you ever been engaged in the business of buying and selling phosphate lands?

A. No, sir.

Q. I will get you to state to the jury the extent of the ex-
221 amination which you made of this property.

A. I don't see hardly how I could put that in words—the extent of my examination of that property. Do you mean the Globe?

Q. Yes, sir; the Globe Phosphate property that you say you estimate to be worth $100,000. How did you reach your estimate?

A. I reached my estimate by going over the property carefully and taking some measurements and calculating, as nearly as I could at that time, the amount of phosphate that there was there.

Q. How did you calculate the amount?

A. By measuring the thickness of that part of the deposit I could see and the extent of the ground covered as pitted.

Q. Did you take it for granted that it was the same character of deposit all over the property?

A. No, sir; not all over the property; only one deposit where the machinery is. I don't claim to have seen any other part of the property with a view of examining.

Q. How much land was there in this part of it which you say, in your opinion, was worth $100,000?

A. That I couldn't say. I should think there was something like 10 or 15 acres in this part where it was pitted and that I saw.

Q. Did you know anything as to the character of the phosphate found there?

A. I have some idea; yes, sir. I don't call myself an expert in the character of the phosphate.

222 Q. You are not a chemist?

A. No, sir.

Q. You did not analyze it yourself?

A. No, sir; but I had seen analyses.

Q. You had seen what somebody said?

A. No; not what somebody else said; what somebody else had written.

Q. They put it on paper?

A. Yes, sir.

Q. What they said on paper?

A. Well, put it that way.

Q. Then you had seen what somebody else wrote about it?

A. That is it.

Q. From that you formed your opinion?

A. Yes, sir.

Redirect examination:

Q. What company are you connected with here?

A. I was connected with the High Springs that time.

Q. I mean what business company, not phosphate company.

A. The D. P. Upson Machinery Co.

Q. Have you, as a result of your connection with that company, had an opportunity to examine and compare numbers of phosphate deposits in various places?

A. Yes, sir; I have been over nearly all the large deposits in the State—that is, rock phosphate.

Q. Was it or not your habit in furnishing machinery for these phosphate companies, the various places in which you went, and also in this case, to examine into the character and value of the property?

223 A. It was, yes, sir; to a certain extent. I used to post myself the very best I could, when I was making sales and giving credits, as to the value of the property.

Q. Then your values that you arrived at were conservative business values, made in a business way, for your own protection, to a certain extent?

A. I considered them conservative, and I made them for my own protection at that time.

Recross-examination:

Q. You say it was your custom to do that for your own protection. You stated awhile ago that you sold machinery to this company.

A. I beg pardon; I don't think that I said that I sold machinery to this company.

Q. You furnished the machinery?

A. I furnished the machinery.

Q. Is it not true that you did not take that property, or that you did not look to it as security for your machinery, but that you took the personal obligation- of Mr. Agnew and Mr. Bishop?

A. When I went there——

Q. Is it not true; answer it and then make your explanation.

A. Please repeat the question.

Q. Isn't it true that you furnished that machinery, and that you did not take any security on this property and did not look to this property, but that you took in payment of that machinery

224 the personal obligations of Mr. Agnew and Mr. John A. Bishop?

A. In part.

Q. And part cash?

A. Yes, sir.

Q. Now you can explain.

Q. What I was going to say, the time I made this examination it was with a view of furnishing the company at that time with machinery. I had been asked to furnish the company, but the company was in litigation at that time and I did not care to furnish it.

Q. I will ask you if you had furnished any of this machinery to this company in January, 1894.

A. That question I could not answer at present, because I do not remember just exactly when the machinery was shipped there; but I think not. When I was down there and saw the property I had furnished no machinery to the company.

Q. When was that?

A. About two years ago; it might have been in the last of December or might have been in January; could not be positive.

Q. How long after that before you did ship machinery?

A. I couldn't state the exact date; it was something like two months, but of course the contract was made before that, before the machinery was shipped, because I had to get the machinery after the contract was made. If I remember correctly, it was about the middle of March when I made the first shipment to or for the mine.

225 The defendant, further to maintain the issues on his part, then recalled as a witness ALEX. MCINTYRE, who testified as follows:

Direct examination:

Q. You have been sworn in this case already?

A. Yes, sir.

Q. What position did you occupy with the First National Bank of Ocala in the spring of 1894?

A. I was cashier of that bank?

Q. You have testified that certain bonds which have been identified by you were purchased by the bank from Mr. Agnew in 1894, in Jan'y, February, and May, have you not?

A. Yes, sir.

Q. You said in your examination that Mr. Agnew said he would guarantee the payment of those bonds?

A. Yes, sir.

Q. Will you state whether or not he did so guarantee them?

A. He did.

Q. (Handing paper to witness.) Look at that paper and see whether or not you recognize it.

A. Yes, sir; I do.

Q. Who wrote the written part of it?

A. I did.

Q. Was that paper put into your custody as cashier of the bank by Mr. Agnew?

A. Yes, sir; it was.

Q. Was it signed by him in your presence?

A. Yes, sir.

226 The defendant offered paper in evidence, being guarantee of Enoch W. Agnew, dated Feb'y 12, '94. Same is read to the jury and filed in evidence.

Q. Does the description of the bonds, as appears in that paper,

describe the bonds to which you have testified already and which have been introduced in evidence in this case?

A. Yes, sir.

Q. What was done with that guarantee when it was delivered to you?

A. It was put in the safe with the bonds, in the same package.

Q. Do you know of your own knowldge whether it was in the safe with that package when you left the bank?

A. I do; it was there.

Q. Did you at any time while you were cashier of that bank and subsequent to the purchase of those bonds report them to the comptroller as part of the assets of the bank?

A. I did.

Q. Did or did not the fact of that guarantee appear in those reports?

A. It appeared on the report; I notified the comptroller that the bonds were there, and that they were guaranteed by Mr. Agnew.

Q. How long had you known Mr. Agnew in 1894?

A. About 12 years.

Q. Were you acquainted with his financial condition at that time?

A. Yes; I was quite well acquainted with it.

Q. Was your position such as enabled you to know what was his financial standing at that time?

227 A. Yes; to know quite largely, not altogether.

Q. What was he worth in the spring of 1894, when that guarantee was put into the bank?

A. I couldn't say what he was worth.

Q. You don't know well enough to state what he was worth?

A. No, sir.

Q. You don't know what property he owned at that time?

A. I knew a good deal of property that he owned in a general way, a great deal.

Q. In a general way you knew that he owned a great deal of property?

A. Yes, sir.

Q. Do you know what his commercial rating was at that time?

The plaintiff objected to this question.

The court sustained said objection; to which decision the defendant excepted.

Q. Then you are not able to state of your own knowledge any sum that he was worth in the spring of 1894?

A. I don't know exactly to any certain amount that I could testify to; I know a good deal of property that he owned.

Cross-examination:

Q. That guarantee was given on the 12th day of February, 1894; you remained with the bank as its cashier until June, 1894?

A. Yes, sir.

Q. What time in June did you leave the bank?

A. I believe it was the 5th; I wouldn't say positively, but I think it was.

228 Q. Did Mr. Agnew, while you were with that bank, ever pay it one cent of interest on account of those bonds, or did he ever pay one cent of their principal?

A. He did not.

Q. You have been asked as to his property interests at the time of that guarantee, and you have stated that he had considerable property. I will ask you if it is not also true that he was heavily indebted at that time, in Feb'y, 1894.

A. I could not swear that he was very heavily indebted.

Q. You can't swear of your personal knowledge in what condition that considerable property was in, either, can you, as to whether it was free from encumbrances or not?

A. I never heard of any encumbrance—any mortgage—on his property at that time.

Q. Can you say it was not mortgaged at that time?

A. I could swear to the best of my knowledge and belief.

Q. Is it not a fact and don't you know it as a fact that after the closing of this bank bills of sale and other conveyances, as of date back in 1893 and in the early part of 1894, were filed to a considerable portion at least of this property?

A. There were papers of that kind that were never on record before that.

Q. That bore date back in 1893 and 1894?

A. Yes, sir. You asked me about any considerable amount. It is just a question what you call——

Q. I mean in proportion to what property he had.

A. It would not be considered so very large. The debts
229 that I knew of would not be considered so very large in proportion with what he was reported to be worth.

Q. We are speaking of what your actual knowledge is of what he is worth. Do you mean to say that it bore small proportion to what he was actually worth or what he was reported to be worth?

A. I mean the debts that I knew of that he owed were not so very large.

Q. I will ask you why you resigned as cashier of that bank in June, 1894.

Defendant objected to this question as immaterial.

By the COURT: That might be relevant and might not. If he resigned because he knew that Mr. Agnew's guarantee was not good for anything that might be relevant.

Mr. GUNBY: If he resigned because he knew that Mr. Agnew's guarantee was not good for anything in Feb'y, 1894; but he did not resign until July, and he so testified. The question before the court and jury is not what he was worth afterwards, but what he was worth at that time.

Mr. CLARK:

Q. Didn't you attempt to resign as cashier of that bank previous to the time when you did actually resign?

A. Yes, sir; I offered my resignation at the regular annual meeting of the stockholders in January, 1894.

Q. I will ask you why you tendered your resignation at that time as cashier of that bank.

The defendant renewed his objection to this question as
230 immaterial; but the court overruled the objection and allowed the question to be answered; to which decision of the court the defendant excepted.

A. What is the question?

Q. Why you tendered your resignation in January, 1894.

A. I could not state any one particular or special reason for tendering it. In 1893, during the time when all banks were having hard times, of course the banks there had hard times, and I just simply made up my mind then that when things got back to their normal condition again I was going to get out of that business right there.

Q. So that your reason was just because you wanted to quit the banking business?

A. I would not say that that was the reason.

Q. What we want is the reason.

A. I would state that, of course, it is very apparent I was not altogether satisfied with the business. That is my reason for getting out; I wasn't satisfied. I couldn't state any particular.

Q. You were not satisfied with the business or the manner in which the business was conducted, which?

Defendant excepted to this question.

By the COURT: To pursue that line of questioning would be bringing in rather irrelevant and general matters, which might possibly influence the jury and which might not be relevant in this issue, unless he can state some definite thing.

Mr. CLARK: I will ask a straight question.

Q. I will ask you if it is not true that you tendered your
231 resignation and made up your mind to quit the service of the bank on account of the acts and doings of Mr. Agnew, president of the bank, similar to this bond transaction.

The defendant objected to this question as immaterial and leading; but the court overruled the objection and allowed the question to be answered; to which decision of the court the defendant excepted.

A. As I said, there was no one special reason that I could mention that caused my resignation.

By the COURT: If he cannot state anything definite, the court does not want any general information or implication.

The defendant, further to maintain the issues on his part, then recalled C. J. HUBER, who testified as follows:

Direct examination:

Q. When did you become the cashier of the First National Bank of Ocala?

A. About the 4th of June, 1894.

Q. (Handing guarantee already in evidence to witness.) Will you look at this paper and state whether it was ever in your possession as such cashier?

A. Yes, sir.

Q. Will you state what you did with it?

A. It was filed away with the bonds.

Q. What did you do with the bonds?

A. The bonds were all placed in the safe.

232 Q. What became of them afterwards, and what became of the guarantee?

A. The bonds were still there while I was cashier. They remained in the safe, and the guarantee was still filed there with the bonds.

Q. How long did you remain cashier?

A. I was cashier up to about the 4th or 5th of Jan'y, 1895.

Q. Did you remain in the bank in any other capacity after that time?

A. Yes, sir.

Q. Do you know of your own knowledge what was done with the bonds and the guarantee?

A. With the Globe bonds?

Q. Yes, sir.

A. They were sent to New York.

Q. Was the guarantee sent with them?

A. No, sir; it was not sent with the bonds. In the hurry to get them off on a train the guarantee was left out, and it was afterwards sent, I think, by E. W. Agnew, Jr., to Mr. H. B. Masters, New York, under separate cover.

Q. It was inadvertently left out, and it was sent for the purpose of accompanying the bonds?

A. Yes, sir.

Q. The bonds were sent to the same source that the guarantee was?

A. The bonds were sent on, I believe, to be used as collateral security, and the guarantee was left out, and it was sent—mailed under separate cover; mailed the same day. The bonds were sent by express.

Q. Mailed the same day for the same purpose, to be used

233 as collateral security?

A. Yes, sir.

Cross-examination:

Q. During the time you were cashier of that bank did Mr. E. W. Agnew, the defendant, ever pay one cent of the interest accruing

upon those bonds, or did he ever pay one cent of the principal of those bonds to the bank?

A. Not that I know of.

Q. Would you have known it?

A. I would have been apt to.

Q. Did you resign as cashier of that bank in January?

A. Previous to January.

Q. Previous to January, 1895?

A. Yes, sir.

Q. I will ask you if you resigned your position as cashier of that bank; if it is not true you did resign your position as cashier of that bank on account of the acts and doings of Mr. E. W. Agnew, its president, in relation to these bonds and other matters of that character.

The defendant objected to this question as immaterial and not in cross-examination of anything asked on the direct.

The court sustained the objection.

The defendant, further to maintain the issues on his part, then called as a witness W. B. BARNETT, who, being duly sworn,
234 testified as follows:

Direct examination by Mr. GUNBY:

Q. Where do you reside?

A. In Jacksonville.

Q. What is your business?

A. Banking.

Q. With what bank are you connected?

A. National Bank of Jacksonville.

Q. What office in that bank do you hold?

A. President.

Q. How long have you been president of that bank?

A. Over 7 years.

Q. How long have you been connected with it?

A. We have only been a national bank a little over 7 years.

Q. What business were you in prior to 7 years ago?

A. Private bank.

Q. How long were you connected with that institution?

A. 11 years.

Q. In what capacity?

A. As president.

Q. Then you have been in the banking business in Jacksonville as president of a bank, first, a private institution and then a national bank—together how long?

A. Would be 18 years last March.

Q. Do you know the defendant, E. W. Agnew?

A. I do.

Q. How long have you known him?

A. At least 15 years.

235 Q. Do you know anything of his financial standing and condition in the spring of 1894—in the early part of 1894?

A. Nothing very definite; always considered him good for all of his contracts.

Q. Do you or not in your business keep up with the financial standing of men who occupy such a position as Mr. Agnew did at that time?

A. We try to.

Q. Are you sufficiently acquainted with Mr. Agnew's standing in the spring of 1894 to testify as to whether or not you considered his obligation, guarantee, or endorsement at that time good for $20,000?

Mr. CLARK: Wait a minute.

A. Yes; I considered him good.

The plaintiff asks that the last answer be stricken out. The witness must state the source of his information.

By the COURT: What he considered at that time his sources of information may go to the jury, and they may understand what they were worth. The question is not the sufficiency of Mr. Agnew at that time.

Mr. GUNBY: The main question we want to prove by this class of testimony is that in the spring of 1894, when Mr. Agnew guaranteed these bonds—his personal guarantee—we want to prove by this witness and other presidents and cashiers of banks of this city, who are familiar with the standing of each other and their property and whose business it was to inspect, that at that time his guarantee was perfectly good for $20,000.

236 By the COURT: I do not consider this testimony relevant.

Mr. GUNBY: I will state our objection:

The defendant offers testimony tending to prove by W. B. Barnett, president of the National Bank of Jacksonville, that he is a banker and president of that bank, and that he considered in the spring of 1894 that the defendant, E. W. Agnew, was in such a financial condition that his personal endorsement or guarantee was perfectly good for $20,000. The court rules that the evidence is not admissible; to which decision the defendant excepted.

Mr. FOSTER: The defendant offers this testimony to prove or show the intention of the defendant that at the time that he placed those bonds in the First National Bank of Ocala he guaranteed the same by his personal guarantee.

By the COURT: Any testimony that would show positively the financial condition of Mr. Agnew at that time, not in the commercial world—the opinion of what his guarantee would be taken for by others—is not a true test of what he knew himself. The opinion of others as to his standing at that time I do not think should be introduced to determine the value of that guarantee.

The defendant excepted to same.

Plaintiff moves to strike that portion of the witness's testimony stating that he considered him good.

The court sustained the motion; to which decision the defendant excepted.

237 The defendant, further to maintain the issues on his part, then called as a witness Mr. STEWART, who, being sworn, testified as follows:

Direct examination by Mr. GUNBY:

Q. Where do you reside and what is your business?
A. Jacksonville; I have charge of R. G. Dun & Co.'s offices.
Q. You are the R. G. Dun & Co. agent?
A. Yes, sir.
Q. What is the business of R. G. Dun & Co.?
A. The mercantile agency—commercial agency.
Q. What do you do?
A. We undertake to report the condition of the business men of each State.
Q. You have a regular system of reporting business men as to their financial condition?
A. Yes, sir.
Q. Have you any record of the financial condition of E. W. Agnew in the early part of 1894?
A. Yes, sir; we have.

Mr. GUNBY: If the court please, before asking this witness any further questions, I want to offer to show that Dun's Commercial Agency rated Mr. Agnew at that time at a certain amount of money.

By the COURT: The question in this case is what was his intent, and he knew himself what that guarantee was worth, and that guarantee was worth just as much as he would be able to make it worth in a case of emergency. The question here is not
238 how much Mr. Agnew was worth, but the question is how much he knew himself to be worth at that time and how good he knew his guarantee was. I consider in that case that if he had good grounds to believe that he was perfectly able to comply with that guarantee in every way and according to his own financial condition at that time—had no doubt in his own mind—I will admit that such positive evidence as that might be relevant to go to the jury to show he had no intent to injure or defraud the bank, but what the opinions of the financial world were in regard to his condition is not the best evidence. This ruling will be had upon the testimony of Mr. Stewart in this case; to which decision the defendant excepted.

The defendant, E. W. AGNEW, was then called as a witness in his own behalf, and, being duly sworn, testified as follows:

Direct examination by Mr. GUNBY:

Q. Are you the defendant in this case?
A. Yes, sir.
Q. How long have you been in business in Ocala?
A. Since 1865.
Q. What business were you in?

A. Mercantile business.
Q. How long did you continue the mercantile business?
A. Up to last April.
Q. What other business were you in?
A. Hotel—anything like that?
239 Q. Were you or not the president of the First National Bank of Ocala?
A. Yes, sir.
Q. When was the First National Bank of Ocala organized?
A. 1886; I think that is the date.
Q. Who was its first president?
A. I was.
Q. Will you state what you were worth in the spring of 1894?
A. I think I was worth $300,000.00.
Q. You think you were worth $300,000?
A. Yes, sir; at a low rate.
Q. What made you worth it; in what did it consist? Can you state what you had that was worth $300,000?
A. Yes, sir.
Q. State it as briefly as you can.
A. I had $80,000 in stocks, $40,000 in ora*gne* groves—really more than that.
Q. You had $40,000 in orange groves?
A. Yes, sir; at the rate they were selling at they were worth a great deal more than that.
Q. Be more specific. State what groves you own or owned at that time.
Q. One in Citrus county.
Q. What was the one in Citrus county worth?
A. $10,000. I wouldn't have taken $10,000 for it.
Q. Was it a bearing grove?
Q. Some of it; yes, sir.
240 Q. Where did you own any other grove property?
A. In Hernando county.
Q. What was that grove worth?
A. There were three groves there, different places; cost me about $35,000.
Q. They cost you $35,000?
A. Yes, sir; with what I expended on them and what I paid out for the property.
Q. Where else did you own any groves?
A. I own a grove in Manatee county.
Q. What was that worth?
A. I don't know. It cost me $4,000. It is not hurt much by the freeze.
Q. I am speaking of what was it worth in 1894.
A. Yes, sir; it was worth that. It is now worth a good deal more than that.
Q. What other orange groves?
A. I had three groves in Marion county.
Q. What were they worth?

A. One was at Citra—I could have sold it for $3,500—a small grove, and one below Ocala, 7 or 8 acres, small one.

Q. What was that worth?

A. I believe about $1,500, and another right near town, about five acres.

Q. What real estate, if any, did you own and what was its value, improved real estate, in 1894, in the spring?

A. About $40,000, real estate. There is a piece of property
241 Mr. Smith has a deed to, no mortgage; a deed, with the understanding that when I paid him up he would deed me the property. I don't count that.

Q. You don't count anything except what was unencumbered?

A. Yes, sir.

Q. In 1894 what did you hold and own in your own name in real estate—improved?

A. $40,000.00.

Q. You think it was worth $40,000?

A. Yes, sir.

Q. Is that what you could have sold it for—what it was worth in the market at that time?

A. It would sell for that easily.

Q. What real estate was it—what did it consist of?

A. A piece of property right about where the F. C. & P. and Florida Southern cross about 300 feet long; about 3 acres in it.

Q. What else did it consist of?

A. And I had two stores I rented out. I consider them worth—I was offered $14,000 for them—two big stores there, 175 feet long, I think, two stories high, brick building—part brick, part concrete.

Q. What was that worth in 1894?

A. We owned it—my father and myself. I had a half interest in it in 1884. He went out of business and he sold Mr. Weathers and myself this interest; was worth about $24,000. It would be two-thirds of that.

242 By a JUROR: What was the size of that building?

A. 175 feet long, I think; 60 feet by 175.

Mr. GUNBY:

Q. Where was that property situated—what part of town?

A. At the corner of Magnolia street.

Q. Was it in the best portion of the business part of town?

A. Yes, sir.

Q. What other property did you own at that time?

A. Then I owned the stables—half interest in the stables with my father; valued that at about $4,000, at a very low rate, too. That half was mine after his——

Q. State what else.

A. Then I had my residence.

Q. Your residence, your home—what was that worth?

A. I don't know as I put that in. I guess — leave it out.

Q. Your home place was not in your name and unencumbered at that time?

A. No, sir.

Q. What other property did you own?

A. I have several houses rented to different parties.

Q. Did you have any unimproved real-estate; and, if so, where and how much?

A. The best estimate I can make of it is about between 35 and 40,000 acres.

Q. Where was it and what was the character of it?

243 A. It was prime, good land. I own 1,800 acres, half interest in 1,800 acres, in Levy county, and the Gulf hammock cedar land; owned a lot in Citrus county—I forget how much—and Hernando county. I think I had altogether about 4,000 acres. Most all of it is hammock except a few——

Q. That is in Hernando county?

A. Then in Sumter county quite a lot; I suppose about 3 to 4,000 acres. I don't know exactly how much.

Q. Did you own any unimproved lands in Marion county?

A. Yes, sir; and in Lake county I owned about 500 acres, and also owned an interest in several houses in Leesburg; two, I think, in which I had a $\frac{2}{3}$ interest; then I own in Alachua county about 300 acres or, say, 200 acres; then I owned in Putnam county—got about 150 acres over there.

Q. Did you own any unimproved real estate in Marion county?

A. Lands under cultivation?

Q. Lands out of town in Marion county.

A. A lot under cultivation.

Q. How much?

A. I don't know exactly how many acres under cultivation, but I suppose there is not less than 2,500; might be 4 or 5,000 acres. I am not positive.

Q. Not less than 2,500 acres?

A. No, sir.

Q. What other property did you have beside improved and unimproved real estate? Did you have any mortgages?

A. Yes, sir.

244 Q. How much individually?

A. About $40,000.

Q. Did you have any other interest in personal property, business property, outside the bank? Were you a partner of E. W. Agnew & Co.?

A. Yes, sir.

Q. What interest did you have in that?

A. Two-thirds interest. Mr. Weathers—I took him in in 1887. He never had anything. I took him in in 1884, and he has made it since that time. He was $800 in debt when I took him in.

Q. What was the value in 1894 of your interest in the business of E. W. Agnew & Co.?

A. I think the business worth about $400,000.

Q. You think the business was worth $400,000?

A. No; I don't know as it would be worth that much—a good deal of mortgages and claims that may not be paid.

Q. I mean at that time, in 1894, in the spring.

A. I think our invoices show something like, including stock of goods and all, $450,000.00.

Q. In the spring of 1894 what interest did you have in that?

A. ⅔ interest.

Q. Now state whether at that time——

A. There's another one, $20,000, at that time good, a Mr. Brown. I sold him a grove — $20,000. I have his notes in my possession now.

Q. What kind of a grove?

A. 120 acres good-bearing grove; that was $20,000, two-
245 thirds interest, I think.

Q. Two-thirds interest in that grove, and your security for it was $20,000?

A. It was this proportion: I had $130,000 of stock; it was capitalized, I think, for $200,000. I sold him 1,300 shares, I think; no; I didn't; sold him 1,100.

Q. You got as security on the sale of that grove—what kind of security did you get—mortgage contract?

A. No, sir; took his stock; 1,300 shares.

Q. What became of the grove?

A. Since then?

Q. Yes.

A. It is in pretty bad shape; don't know what it is worth now.

Q. What caused it to be worthless?

A. The freeze. Mr. Brown told me he had sold it, I understand——

Q. Don't state what you understood—what anybody has told you. What I want to get at is what you were worth at that time.

A. I hold $20,000 of his notes.

Q. And at that time they were good, were they?

A. Yes, sir. It is $19,000, I think, instead of $20,000.

Q. What were the encumbrances on the property you have stated in 1894?

A. On record?

Q. On record or off of record.

A. There was about, I think, $10,000 to Mr. Couch.

246 Q. Was your property, with that exception, free and clear?

A. Except that I don't bring in this other thing of Mr. Smith. I owed him $9,000.

Q. And Mr. Couch?

A. $10,000. They didn't have anything on record to show——

Q. But then they were your debts, were they not?

A. Yes, sir.

Q. What other encumbrances were there?

A. Nothing else except a judgment, $1,500—$500. I went a man's security for attaching his goods. I went his bond; had to pay $500.

Q. You paid the $500?

A. No, sir; that was against me.

Q. At that time, in 1894, in the spring?

A. Yes, sir; but I took an appeal to the supreme court.

Q. The only encumbrance was a judgment which was in litigation?

A. No; the judgment was against me.

Q. But wasn't it in litigation if you appealed it?

A. No; I didn't appeal that judgment, but the one I went on the bond I appealed.

Mr. FOSTER: Was that in 1894?

A. Yes, sir.

Mr. GUNBY:

Q. Those executions were in existence against you in 1894?

A. Yes, sir; they were paid. It is against me, but never put the matter on record; transferred the judgment to me.

247 Q. In other words, it was not put on record and you never paid it?

A. There was one or two other little judgments there.

Q. Is that the reason—this property you owned in your own name—the reason why you stated you were worth at a reasonable estimate $300,000 in the spring of 1894?

A. Yes, sir.

Q. In the spring of 1895, on April the 15th, I think you are charged with having caused to be made a false entry on the books of the bank for a check for $3,000 some hundred dollars. You have heard the testimony, have you not?

A. Yes, sir.

Q. Will you state to the jury what were the circumstances under which the ticket which has been introduced in evidence was made out?

Q. I had Marion phosphate stock; commenced suit against them in this court, and I finally got them to a settlement, and so when they agreed they offered me a certain price for the stock, which I accepted, and there was 1,700 shares belonging to the bank and 1,100 shares of my own—might vary from that a few shares—and I sent them on to Savannah by express to the Merchants' National bank, and they drew a check for $3,400 (in evidence) in payment of the 1,700 shares belonging to the bank. It did not specify belonging to the bank, but the draft was drawn in favor of the bank for $3,400, and my own check for $5,950 for the same kind of stock, and handed to Mr. Williams, and said, "Please credit these

248 up at once, because I want to hand to Mr. Comer Massey and want him to write Mr. Stockton a letter. Mr. McIntyre is going off on this train; I want to have everything ready." There was only a short time to deliver to him, so I stepped around into the other side of the cage and Williams got it down. I handed it to Comer Massey and dictated what I wanted him to write to Mr. Stockton, and Mr. McIntyre took them down to Mr. Stockton. I had already taken up one certificate of deposit—he had three certificates of deposit from Mr. Collins, State treasurer, for $5,000 each—and had sent them down, and instead of Mr. Stockton sending them up in the regular way he came up and I paid him $5,000,

and said as soon as I got returns from Savannah I would hand him the balance.

Q. Did you or not instruct Mr. Williams to credit up that check for $3,400 to your personal account?

A. No, sir; just handed him the checks and for him to credit them up. He was book-keeper for two years and I supposed he knew that belonged to the bank, and I never knew any better until after we suspended.

Q. Do I understand you that you sent both your own check for the 5,000 and odd dollars and the $3,400 to pay Mr. Stockton?

A. It amounted to over $9,000; it lacked a small amount of making $10,000, and I drew a check either on Jacksonville or New York—I don't know which—for the difference to make $10,000.

Q. Whose debt was that money used to pay?

A. The bank's debt.

249 Q. Both your check and the bank's?

A. Yes, sir.

Q. You are charged here with having purchased for the bank $5,000 worth of bonds of the Globe Phosphate Mining Company and putting the face value of them to your own credit in January, 1894. Will you state whether or not you, acting as president of the bank and for the bank, ever bought any of the bonds of the Globe Phosphate Co.?

A. Not for the bank I did not. I bought it myself.

Q. You bought it for yourself?

A. Yes, sir.

Q. It was a private purchase on your own account, was it?

A. Yes, sir.

Q. Do you know and were you acquainted with the value of the lands owned by the Globe Phosphate Mining Co.?

A. Yes, sir; I talked with a great many parties. I never went and inspected it myself.

Q. You were not a judge of phosphate yourself if you had inspected it?

A. No, sir; hadn't been out to any mine there.

Q. Did you make inquiries with reference to its value?

A. Yes, sir.

Q. Whom did you get your information through?

A. From several capable people; talked with a great many people about it.

Q. Can you recollect anybody who gave you an idea of its value?

250 A. Mr. Upson. I asked him about it when we bought some machinery.

Q. Do you know Mr. Bishop?

A. Yes, sir.

Q. Did you have a talk with him about it?

A. Yes, sir.

Q. From the information you got and the investigation you made, what was the value of the Globe Phosphate Company lands at the time you purchased?

The plaintiff objected to this question, for the reason that the witness has not shown that he is competent to give an opinion of such value.

The court sustained the objection as not being the best evidence in regard to the value of the land; to which decision the defendant excepted.

Q. You testified you owned a good many thousand acres of unimproved land. Will you state what the value of the unimproved land was?

A. I think, a very low estimate of it, for $3.50 or $4.

Q. A very low estimate of the entire tract of land that you owned, taking in the cultivated land, was $3 or $4 an acre?

A. Of course there is some of the land worth $100.

Q. And you owned between 30 and 40,000 acres?

A. Yes, sir.

Q. Are you satisfied it was worth $2 an acre?

A. Yes, sir; take it all around, I would not have taken $2 an acre for it then.

251 Q. You would not have taken $2.00 an acre for it right straight through?

A. Not at that time.

Cross-examination:

Q. Is it not true that a large portion of the unimproved lands which you say that you owned at that time were held by you under tax titles?

A. Not most of the land.

Q. A large portion of it?

A. A large portion, yes. As a general thing—it was not in every case—I could safely say ⅔ of that part of it, it was taken; had mortgages on the property and the parties neglected to pay the mortgages and I took the property to save expense.

Q. Isn't it true all the property you owned in the city of Ocala at the time you have been testifying about, in the spring of 1894, that all of that property was covered by a mortgage to Mr. W. H. Couch, which mortgage was put on record after the suspension of the bank?

A. A mortgage for $10,000.

Q. Didn't it cover your city property in Ocala?

A. No, sir; only covered two pieces of property.

Q. Is it not true that since——

A. That was counted in with the other $10,000.

252 Q. Is it not true that since the suspension of the bank there have gone to record in the clerk's office in Marion county deeds, bills of sale, and mortgages to practically all of the property that you owned, and that those instruments were dated prior—that is, in the latter part of 1893 and in the early part of 1894?

A. How is that?

Q. I say is it not true that since the suspension of the bank there

have gone to record in the clerk's office in Marion county deeds, bills of sale, mortgages, and other conveyances, conveying this property which you have been testifying about as owned by you, and which instruments were dated in the latter part of 1893 and early part of 1894?

A. I gave the bank a mortgage for 20,000——

Q. Answer my question and then we will go into the details. Isn't that true?

A. It is really the same thing—same parties; I have paid them.

Q. You can answer yes or no and then you can explain.

A. There's judgments and things now; Mr. Couch put his in judgment; so did Mr. Smith.

Q. But you have not answered my question. You understand the question, don't you?

A. I don't know exactly.

Q. You know what I mean by conveyance of property?

A. Yes; a deed It was only to protect parties.

Q. I am not getting at the purpose of it. I want to know if it is not a fact.

253 A. Yes; I guess it is.

Q. Now, Mr. Agnew, you say you gave the bank a mortgage for $20,000?

A. 20,000 acres—that is, it may vary; I don't say it is exactly that.

Q. Is it not true that the lands in that mortgage were mostly wild, unimproved lands, lying in different portions of the State?

A. A good deal of it; it is good hammock land, a good deal of it; of course there is some pine land, and there is property in town.

Mr. GUNBY: I understand you are questioning him now with reference to mortgages given since the suspension of the bank?

Mr. CLARK: Yes, sir.

The defendant objected to this line of testimony.

The court sustained the objection.

Q. You spoke of owning $80,000 of stocks?

A. Stocks; that was in 1894.

Q. That is what I am talking about. What stocks were they?

A. I had bank stock.

Q. Now, I will ask you is it not true that the Comptroller of the Currency has levied an assessment on your bank stock of $28,000?

A. They had not in 1894.

By the COURT: What assessment has been levied on the bank stock since then—that does not show that the bank stock was

254 not paid for at the time.

Mr. GUNBY: The bank stock was assessable for its face value, whether it was paid for or not, if the court please.

Mr. CLARK:

Q. Mr. Agnew, what other stocks beside the bank stock?

A. I counted——

Q. How much bank stock?

A. There is, I think, $28,000 in my name now.
Q. In 1894?
A. I mean $28,000 in my name, I think.
Q. What other stock did you have?
A. I had several hundred thousand dollars' worth of stock.
Q. You spoke of $80,000. What was the balance?
A. I consider the surplus $47,000, surplus in the bank, which would be $56,000 at that time.
Q. What else?
A. And then I had $11,000 in the—no; I gave them to the bank; hotel company about 15,000.00, I think. It was a majority of the whole stock issued for the hotel company. I turned it all over to the bank. It is in there.
Q. That was stock of the Ocala Company, the company that owned the Ocala house?
A. Yes, sir.
Q. What was that stock worth?
A. I don't know just what. I don't reckon it was worth very much.
Q. Was it worth anything at that time?
255 A. In 1894 I considered it worth something; yes, sir.
Q. Is it not true a mortgage has been foreclosed on the Ocala property and all cleaned out?
A. It was foreclosed last year. I don't count it of much value?
Q. Then what other stock?
A. $12,000 in Marti City.
Q. Of stock?
A. Yes, sir.
Q. What was that worth?
A. That cost me dollar for dollar.
Q. What was it worth, face?
A. I consider it worth that then; I don't know, because they have left it.
Q. They have all picked up and gone, haven't they?
A. The last few days; yes, sir.
Q. What other stock did you have that was of any value?
A. I had stock in the Globe Phosphate Co.
Q. That is the stock in question here?
A. Yes, sir.
Q. You spoke of E. W. Agnew & Co. being worth $450,000. What was the liabilities of E. W. Agnew & Co. in the spring of 1894?
A. About $125,000.
Q. And they had $450,000?
A. Yes, sir. Of course, that consists of a great many debts. All of our best people haven't got*ten* anything now.
Q. Then when you counted their worth you counted in that estimate of $450,000 various debts they held on people over the
256 country?
A. Yes, sir. Then they held a good deal of real estate, too.

Q. Isn't it true that the firm of E. W. Agnew & Co. has been swept out of existence and could not pay its liabilities?

The defendant objected to this question on the ground that it is not admissible, but the court overruled the objection; to which decision the defendant excepted.

A. They failed.

Q. You stated in reference to this $3,400 check, representing the purchase-money for 1,700 shares of stock of the Marion Phosphate Co., that that stock was the property of the bank?

A. Yes, sir.

Q. And that check was in payment for that stock?

A. Yes, sir.

Q. You stated you handed these checks to Mr. Williams and told him to credit them up without giving him any direction as to whom to credit them up?

A. Went to pay the debts of the bank.

Q. Did you tell him whom to credit them to?

A. No, sir; to do so at once.

Q. What did you do with them after he got through with them?

A. I took — and gave — to Comer Massey.

Q. What did he do with the deposit slip?

A. He gave it to Mr. Mayo, cashier.

Q. To him or to you?

A. Mr. Mayo, or, rather, he stuck it up in his pigeon-hole.

257 Q. Which did he do?

A. I couldn't say positively.

Q. Isn't it true that when you were arrested upon this charge, some time during last May, and on your way on the train from Ocala to Sanford, that you interviewed Mr. F. L. Williams repeatedly upon that train and endeavored to get him to state to the district attorney, or whoever should question him at Sanford, that you simply handed him the checks and told him to credit them up without giving him any direction as to where to put them?

A. I told him that is what I did.

Q. Just answer the question.

A. He has told parties——

Q. Answer the question and then you can make any explanation you desire.

A. Yes, sir; I told him that this was correct. He said he wasn't positive one way or another. I told him I simply wanted him to tell the truth.

Q. Did he not tell you that he would not make any such statement because it was not the truth?

By the COURT: No matter what he told Mr. Agnew.

Redirect examination.

Mr. FOSTER:

Q. When you were coming from Ocala to Sanford who was present on the cars beside yourself and Mr. Williams?

258 A. No, sir; that was going down; coming back, we had to come back by Jacksonville.

Q. The question asked you was, On the trip from Ocala to Sanford who was on the cars in company with you and Mr. Williams at the time?

A. Mr. Huber and Mr. McIntyre; I think Mr. McIntyre; Comer Massey, I think.

Recross-examination:

Q. I want to ask you if it is not true that in the spring of 1894 you had all of your bank stock pledged to D. C. W. Smith or some one else as collateral?

A. No, sir; I had paid—do you want the facts in the case?

A. You can give them if you want to.

A. He had 60 shares in the bank, and he sold them to me at 135, and he retained that stock that I bought from him as collateral for my note.

Q. That was how many shares?

A. $6,000, 60 shares. I gave him my note for them and left the stock with him for collateral of that debt. That is what I owe him for that stock.

The defendant, E. W. AGNEW, was then recalled in his own behalf and testified as follows:

By Mr. GUNBY:

Q. In your cross-examination by Mr. Clark he asked you if it were not a fact that practically all the property you owned in
259 1893 in 1894 was covered by conveyances which had been put on record since the failure, but bore date prior to 1894, and in answer to that you have stated, upon being pressed for an answer, practically yes. Now, is it a fact that in 1894 you had made any conveyances of property which went on record after the failure; and, if so, what were they and what was the property?

A. I stated that and Mr. Clark kept insisting——

Q. Go on and answer this question. You answered before, yes, practically. What did you mean by that?

A. I meant no one but Mr. Couch's deed.

Q. As a matter of fact, then, do you testify there was only one deed that was in existence and had been given prior to 1894 that went on record afterwards?

A. Only one, Mr. Couch's.

Q. What property was that on?

A. That was on the store.

Q. How much was the amount of the indebtedness?

A. $10,000 I think is the amount.

Q. Then in the spring of 1894, the only debt for which you had executed a mortgage—a deed that went on record after 1894—was that $10,000 deed to Mr. Couch, was it not?

A. That is the only deed.

Q. Did that cover any other property but that particular piece of property?

A. And the warehouse.

Q. Those two pieces of property, what were they worth?

A. I wouldn't take $35,000 for them.

260 Q. But all the orange-grove property, the wild land, and the improved land you testified you owned at the time were not covered by such conveyances, were they?

A. Nothing else but that item.

Q. At that time, in 1894, you made deeds to nothing that went on record afterwards except that one thing?

A. That is all.

Cross-examination:

Q. Didn't you make deeds, mortgages, or other conveyances after the suspension and date them back that went on record?

A. No, sir; I didn't understand you about that at all when you kept insisting. I didn't understand what you meant.

Q. You understand now?

A. Yes, sir.

Q. Then you say you did not?

A. None except Mr. Couch's.

Q. Will you swear before this jury that no conveyance of your property has gone on record in Marion county since the failure except the Couch transaction that was dated either in 1893, the latter part of 1893, or the first part of 1894?

A. Dated back? It was never dated back. I said to him—told him not to put it on record. He said certainly.

Q. I will ask you this question: Will you swear that no conveyance of any of your property bearing date either in the latter

261 part of 1893 or the early part of 1894 went on record after the suspension of this bank, in the clerk's office of Marion county, other than the conveyance to Mr. Couch?

A. That is all; that is the only one.

Redirect examination:

Q. If there is any other conveyance than the Couch conveyance you have no knowledge of it, have you?

A. No other to go on record.

Q. There was no other?

A. No, sir; and he didn't want to put that on record.

And thereupon the defendant rested.

The plaintiff, further to maintain the issues on its part, then recalled as a witness J. K. McDONALD, who testified as follows:

Direct examination by Mr. CLARK:

Q. You have been sworn, and testified that on the 22nd of April, 1895, you took charge of the First National Bank of Ocala as its receiver. You have also testified in regard to the Globe Phosphate

Mining & Manufacturing Co. bonds which you found among the assets of that bank.

A. Yes, sir.

Q. I will ask you if E. W. Agnew, the defendant, while you were in charge of that bank, paid any interest into the bank upon those bonds or any portion of the principal of those bonds.

A. He did not.

262 The plaintiff, further to maintain the issues on its part, then recalled as a witness G. C. STAPYLTON, who testified as follows:

Direct examination:

Q. When did you take charge of the First National Bank of Ocala as receiver?

A. 17th of August, 1895.

Q. I will ask you if you found the bonds of the Globe Phosphate Mining & Mfg. Company carried among the assets of that bank—those that have been testified to here.

A. Yes, sir.

Q. Are you at present receiver of that bank?

A. Yes, sir.

Q. Been receiver since when?

A. Since 17th of August, 1895.

Q. Up to the present time, still receiver?

A. Yes, sir.

Q. I will ask you if Mr. E. W. Agnew, this defendant, has paid to that bank since you have been receiver any of the interest on those bonds of the Globe Phosphate Mining & Manufacturing Co. or any portion of the principal of those bonds.

A. He has not.

Cross-examination:

Q. You have made no demand on Mr. Agnew for the principal and interest of those bonds, have you?

A. No, sir.

263 Redirect examination:

Q. From your investigation of the books of that bank and knowledge of them, has any interest or principal either of those bonds been paid?

A. Not to my knowledge. I have not made any search through the books, however, for the purpose of ascertaining that.

J. K. MCDONALD was then recalled as a witness for the plaintiff and testified as follows:

By Mr. CLARK:

Q. I will ask you if you made any search in the books of that bank to ascertain if any interest of these bonds or any portion of the principal had been paid.

A. Yes; I did.
Q. Had any of it been paid?
A. I couldn't find any record of it.

Cross-examination:

Q. Did you ever demand payment of the interest of Mr. Agnew?
A. No, sir; I did not; not for that specific debt.

This was substantially all the evidence offered by the parties.

264 V. H. C.
E. M. B. *Certificate for Certified Copy.*
A. N. S.

TREASURY DEPARTMENT, } *ss:*
Office of the Comptroller of the Currency, }

Under the provisions of section 884 of the Revised Statutes of the United States I, James H. Eckels, Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original organization certificate of "the First National Bank of Ocala," Florida, dated February 17, 1886, and of the whole of such original on file and of record in my office.

In testimony whereof I have hereunto subscribed my name and caused my seal of office to be affixed to these presents, at the Treasury Department, in the city of Washington and District of Columbia, this thirty-first day of December, A. D. 1895.

[SEAL.] JAMES H. ECKELS,
Comptroller of the Currency.

265 TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY.

Form 40.

(Ed. 10, 20, '92. 1,000. T. B.)

Instructions. Read Carefully.

The association will have succession for the period of twenty years from the date of the execution of the organization certificate.

The name, etc., of each shareholder, but not necessarily his signature, is required upon the second page. Each person that signs the articles of association is also required to sign the organization certificate upon the third page.

"The organization certificate" must be acknowledged before a judge of a court of record or before a notary public having a seal, and all the shareholders that sign on the third page must make proper acknowledgment on the fourth page.

The "articles of association," "organization certificate," and "certificate of officers and directors" should be executed in duplicate. One copy of each must be filed in the office of the Comptroller of the Currency and one in the bank. By carefully following these directions delays will be avoided.

Organization Certificate.

We, the undersigned, whose names are specified in article fourth of this certificate, having associated ourselves for the purpose of organizing an association for carrying on the business of banking under the laws of the United States, do make and execute the following organization certificate:

First. The name of the association shall be "the First National Bank of Ocala."

Second. The said association shall be located in the city of Ocala, county of Marion and State of Florida, where its operations of discount and deposit are to be carried on.

Third. The capital stock of this association shall be fifty thousand dollars ($50,000), and the same shall be divided into five hundred shares of one hundred dollars each.

Fourth. The name and residence of each of the shareholders of this association, with the number of shares held by each, are as follows:

Name.	Residence.	No. of shares.
Enoch W. Agnew.....	Ocala, Fla.....	450
Wilson H. Conch.....	Ocala, Fla.....	10
Edward Delouest..... ...	Ocala, Fla.....	20
James A. Harris.....	Citra, Fla.....	10
Alexander McIntyre	Ocala, Fla.....	10
		500

266 Fifth. This certificate is made in order that we may avail ourselves of the advantage of the aforesaid laws of the United States.

In witness whereof we have hereunto set our hands this seventeenth day of February, 1886.

ENOCK W. AGNEW.
WILSON H. CONCH.
JAMES A. HARRIS.
EDWARD DELOUEST.
ALEXANDER McINTYRE.

The signature in full of every shareholder must appear on this page.

STATE OF FLORIDA, }
County of Marion, } ss:

On this the seventeenth day of February, A. D. 1886, before me, a notary public of the county of Marion, Fla., personally came

Enoch W. Agnew, Wilson H. Conch, Edward Delouest, James A. Harris, and Alexander McIntyre, to me well known, who severally acknowledged that they executed the foregoing certificate for the purposes therein mentioned.

Witness my hand and seal of office the day and year aforesaid.

[Seal of notary or of court.] [Seal of notary.] EDWARD SPENCER, *Notary Public, Marion County.*

Endorsed: No. 3470. Organization certificate of the First National Bank of Ocala, Florida. B. Exhibit "A." Filed in evidence on trial Jan. 3d, 1896. E. O. Locke, clerk. U. S. *vs.* Agnew.

267 Deposited in the First National Bank of Ocala, Fla., by E. W. Agnew.

4, 1895.

Please list each check separately.

	Dollars.	Cents.
Bank notes		
Gold		
Silver		
Checks		
Sav.	3,400	00
"	5,950	00
	9,350	00

Endorsed: Exhibit C. U. S. *vs.* E. W. Agnew. Introduced in evidence on trial Jan. 3d, 1896. E. O. Locke, clerk.

268 No. 476. SAVANNAH, GA., *April 6th*, 1895.

The Merchants' National bank,

United States depository of Savannah,

Pay to the order of First Nat'l Bank of Ocala $3,400, amount in full for 1,700 shares of the Marion Phosphate Company stock, thirty-four hundred dollars.

J. RAUERS.

When properly endorsed good for $3,400, thirty-four hundred —.

J. G. HUNTER, *Teller.*

Endorsed: Pay to the order of Nat'l B'k St. of Fla. First National Bank of Ocala, Fla., by E. W. Agnew, p't. For collection account National Bank State of Florida, Jacksonville, Fla. T. P. Denham, cashier. Through the Savannah Clearing Association. Paid Apr. 17, 1895. S. B. & T. Co. U. S. *vs.* Agnew. Exhibit "D." Tendered in evidence on trial Jan. 3, 1896. E. O. Locke, clerk.

269 First National Bank, Ocala, Fla.

Charge E. W. Agnew		$24,529 65
Bradley	5,138 45	
Central N. B.	5,000 00	
Miller	1 00	
Moody & Son	18 75	
"	37 50	
Note W. M. Winholt	325 00	
" E. T. Townsend	75 58	
Chicago	5,000 00	
Miller	1 00	
Buffum	47 22	
Moody	22 50	
W. H. Couch	1,000 00	
B. H. Barnett	22 00	
Express	35	
Nat. B'k Jax	1,000 00	
Jas. Robertson	300 00	
Fla. Nat. b'k	112 50	
C. H. Suber	25 00	
Cash	5 00	
Miller	1 00	
Cash	25	
" Mrs. Agnew	30 00	
C. H. Suber	304 00	
B. A. Weathers	200 00	
C. W. White note	4,861 55	
C. H. Suber	1,000 00	
Miller	1 00	
	24,529 65	

April 16th, 1895.

First National bank, Ocala, Fla. Paid Apr. 16, 1895.

Endorsed: U. S. *vs.* Enoch W. Agnew. Exhibit E. Put in evidence on trial Jan. 4, 1896. E. O. Locke, clerk.

270 *Articles of Incorporation of the Globe Phosphate Mining and Manufacturing Company of Citrus County.*

STATE OF FLORIDA, }
County of Citrus. }

This indenture made and entered into, this 25th day of August, A. D. 1890, between V. M. Metcalf, F. G. Purnell, Walter S. Turner, Robert A. Warnock, Chas. S. Young, Thomas Stafford, T. C. Cato, W. A. Allen, James Redding, W. W. Vincent, M. M. Gaston, Michael L. Tuttle, Chambers Graham, W. D. Harman, E. W. Priest, S. R. Buel, E. C. Graham, Basnett & Cochran, Geo. W. di Muro, H. A. Parish, L. C. Cotten, J. T. Pritchard, J. W. Davis, J. R. Biggs, F. M.

Dampice, E. C. Miles, S. R. Birdsey, C. M. Livingston, L. R. Eichenlaub, J. R. Baimarbe, A. B. Moore, B. F. Boswell, R. C. Bradley, M. A. Smith, John T. Dampier, A. C. Withrow, Joshua D. Spooner, J. W. Fleming, W. H. Miller, W. S. Wilhill, S. L. Bitting and W. A. Turner;

Witnesseth, that the persons whose names are hereto attached associate themselves together as a body corporate under the general incorporation laws of the State of Florida for the purpose of carrying on a general mining, manufacturing and industrial business, and the nature of the business will be to dig, mine and remove earth, marls, rocks, phosphate fossils, phosphate-bearing substances, and other minerals, and to dig and prepare the same for market and manufacture the same and such other material as the company may purchase or acquire in any way with chemicals, acids and fertilizers and to trade therein, also to try and sell phosphate and timber lands, to get out timber from the lands of said company, and to build and construct tramroads through the said lands, and to engage in and transact such other business as may be proper and necessary to be transacted by a general mining, manufacturing and industrial company or corporation.

2nd. The name and style of said corporation is the Globe Phosphate Mining and Manufacturing Company, of Citrus county, Florida, U. S. A., and its places of business are on the lands of
271 said company, in the county of Citrus and elsewhere in the State of Florida.

The several offices shall be at Timkinsville, with a branch office at Ocala, Florida, and the principal place of business in the State of Florida shall be at Timkinsville.

3rd. The authorized capital stock of the company is ($5,000,000) five million dollars in shares of ($100) one hundred dollars each, all of said capital stock is fully paid up in land described in general as follows, to wit:

In Citrus county, Florida.

80 acres in sec. 4, tp. 20 S. R. 19 E. and 81 acres in sec. 12, tp. 20 S. R. 19 E.—47 acres lot 4, sec. 22, tp. 20, S. R. 20 E.—40 acres in sec. 19, tp. 20, S. R. 19 E—100 acres in sec. 3, tp. 19 S. R. 18 E., and 40 acres, sec. 33, tp. 18, S. R. 18 E.—20 acres sec. 4, tp. 19 S. R. 18 E.—and 80 acres in sec. 24, tp. 19 S. R. 20 E.—47 acres in sec. 19 tp. 20 S. R. 21 E.—20 acres sec. 33 tp. 18 S. R. 18 E.—160 acres in sec. 22 tp. 17 S. R. 17 E.—10 acres sec. 10 tp. 19 S. R. 20 E.—80 acres in sec. 14 tp. 19 S. R. 20 E.—47 acres sec. 22 tp. 20 S. R. 20 E.—120 acres, sec. 35, tp. 17, S. R. 17 E. and 40 acres sec. 24, tp. 17 S. R. 19 E. and 80 acres in sec. 15 tp. 17, S. R. 19 E. and 40 acres in sec. 36 tp. 17, S. R. 19 E.—40 acres in sec. 36, tp. 17 S. R. 19 E.—40 acres in sec. 11 tp. 18, S. R. 18 E.—80 acres in sec. 36, tp. 20, S. R. 20 E.—40 acres in sec. 24 tp. 20 S. R. 20 E.—80 acres in sec. 15, tp. 19 S. R. 18 E.—80 acres in sec. 29, tp. 17, S. R. 17 E.—80 acres in sec. 27, tp. 17 S. R. 17 E.—140 acres in sec. 26, tp. 17, S. R. 17 E.—40 acres in sec. 35 tp. 17, S. R. 17 E. 80 acres in sec. 12 tp. 20 S. R. 19 E.—55 acres lot 2, sec. 15 tp. 20 S. R. 20 E.—160 acres in

sec. 15, tp. 17 S. R. 17 E.—50 acres in sec. 8, tp. 19 S. R. 20 E. and 40 acres in sec. 3; tp. 18 S. R. 17 E.—160 acres in sec. 35, tp. 17 S. R. 17 E.—160 acres in sec. 26 tp. 17 S. R. 17 E.—400 acres in sec. 24, tp. 19 S. R. 19 E.* acres not given* in sec. 25 tp. 26 S. R. 27 E. and 36 tp. 19 S. R. 19 E. 90 acres in sec. 15, tp. 19 S. R. 18 E.—132 acres sec. 35 tp. 16 S. R. 17 E.—161½ acres in sec. 12 tp. 20
272 S. R. 19 E.—40 acres in sec. 25 tp. 18 S. R. 20 E.—300 acres in sec. 5 tp. 18 S. R. 20 E.—40 acres in sec. 21 tp. 19 S. R. 20 E.—80 acres in sec. 9 tp. 19 S. R. 19 E.—80 acres in sec. 10 tp. 19 S. R. 20 E—480 acres in sec. 14 tp. 19 S. R. 19 E.—180 acres in sec. 11 tp. 19 S. R. 19 E.—320 acres in sec. 30 tp. 19 S. R. 19 E.—271 acres in sec. 21 tp. 18 S. R. 19 E.—160 acres in sec. 23 tp. 18 S. R. 20 E.—10 acres in sec. 15 tp. 19 S. R. 20 E.—20 acres in sec. 15 tp. 18 S. R. 18 E.—40 acres in sec. 26 tp. 19 S. R. 19 E.—40 acres in sec. 5 tp. 20 S. R. 20 E.—40 acres in sec. 25 tp. 19 S. R. 19 E.—120 acres in sec. 32 tp. 19 S. R. 20 E.—10 acres in sec. 19 tp. 19 S. R. 20 E.

In Sumter county, Florida.

240 acres in sec. 28, tp. 18 S. R. 22 E. and in sec. 29 tp. 18 S. R. 22 E.—40 acres in sec. 20 tp. 20 S. R. 21 E.—*acres not given and sec. 30 tp. 20 S. R. 21 E.—acres not given sec. 14 tp. 20 S. R. 20 E.

In Hernando county, Florida.

80 acres in sec. 7, tp. 23 S. R. 18 E.—containing in all (15,000) fifteen thousand acres more or less, and other lands hereafter to be conveyed to said company, said lands are valued at ($5,000,000) five million dollars.

4th. This company will commence business on the day of filing the articles of incorporation with the secretary of state, at Tallahassee, Florida, and with the clerk of the circuit court in and for the county of Citrus in the State of Florida, and terminate (99) ninety-nine years after said commencement.

The business of this company shall be conducted by a president (3) three vice-presidents, secretary, corresponding secretary and treasurer and a board of (15) five directors.

5th. The officers of this company shall be one president, (3) three vice-presidents, secretary, corresponding secretary and treasurer, the said officers shall be elected at the time of organizing, and annually thereafter on the 4th Monday of August at the same time and place and to serve for the same length of time as the presi-
273 dent, vice-president, secretary, corresponding secretary and treasurer there shall be elected (5) five directors—said officers and directors shall be stockholders in said company.

6th. The highest amount of indebtedness to which this company can subject itself at any time is (50) fifty per cent.

7th. The stock of this company shall be non-assessable.

J. R. BIGGS, *President.*

WALTER S. TURNER, *Secretary.*

Filed Oct. 8th, A. D. 1890.

STATE OF FLORIDA, }
Office of Secretary of State, } *ss:*

I, Jno. L. Crawford, secretary of State, do hereby certify that the foregoing is a correct transcript of the original now on file in this office.

Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this 17th day of December, A. D. 1892.

[SEAL.] JNO. L. CRAWFORD,
Secretary of State.

Endorsed: U. S. *vs.* E. W. Agnew. Exhibit "G. G." Filed in evidence on trial Jan. 6, 1896. E. O. Locke, clerk.

274 The bonds filed — offered in evidence were the Globe Phosphate Mining & Manufacturing Co., Citrus county, Florida, each of the value of one thousand dollars, payable in gold coin of the United States, in ten years from date or on call, at or after the expiration of two years from date, drawing interest at eight per cent., semi-annually, in gold coin, payable on the 15th day of December and June in each year, according to tenor of coupons attached, upon presentation and surrender of said coupons respectively; default in payment of coupons and continuing default for two months, the whole becomes due; all bearing even date and of the same tenor and same term, 10 years; executed in pursuance of vote of the stockholders and board of directors; secured by first-mortgage bond upon all property of even date, present and future, acquired by the company, the right to redeem after two years being optional with the company; said bonds dated 11th December, 1893; signed by John A. Bishop and Herbert A. Bishop, the original having been withdrawn by order of the court, to be returned to the receiver of the First National Bank of Ocala.

275 Deposited in the First National Bank of Ocala, Fla., by E. W. Agnew.

MAY 12, 1894.

Please list each check separately.

	Dollars.	Cents.
Bank notes		
Gold		
Silver		
Checks	10,000	00

[Written across the face:] Bonds of Globe Phosphate Co.

Endorsed: Exhibit "J." Put in evidence on trial Jan. 4, 1896. E. O. Locke, clerk.

276 Deposited in the First National Bank of Ocala, Fla:, by E. W. Agnew.

FEB'Y 12, 1894.

Please list each check separately.

	Dollars.	Cents.
Bank notes		
Gold		
Silver		
Checks, bonds	10,000	00
Less cash item	9,177	49
	822	51

Endorsed: Exhibit " K." Put in evidence on trial Jan. 4, 1896. E. O. Locke, clerk.

277 STATE *od* FLORIDA, }
Marion County. }

Know all men by these presents that for and in consideration of the sum of ($5) five dollars cash in hand paid by the First National Bank of Ocala and for other good and valuable consideration I hereby guarantee to the said bank the payment on demand of both principal and interest of fifteen (15) bonds of the Globe Phosphate Mining and Manufacturing Company, numbered from one (1) to five (5), both inclusive; eleven (11) to fifteen (15), both inclusive, and twenty-one (21) to twenty-five (25), both inclusive, for one thousand ($1,000) dollars each, total fifteen thousand ($15,000) dollars, and bearing interest at the rate of eight (8 %) per cent. per annum. It is agreed and understood that I hereby guarantee the payment of the principal of these bond-, payable on demand, with accrued interest.

This agreement and contract is to be binding on me, my heirs, executors, administrators, or assigns.

E. W. AGNEW.

Ocala, Fla, Feb'y 12th, 1894.

Bonds of the Globe Phosphate Mining and Manufacturing Co. Nos. 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 77, and 79 are to be included in the above guarantee, and I hereby guarantee principal and interest on all of the above-described bonds.

E. W. AGNEW.

Endorsed: D'f't'- Exhibit No. 1. U. S. *vs.* Agnew. Put in evidence on trial Jan. 6, '96. E. O. Locke, clerk.

278 After the argument of counsel to the jury the court charged the jury.

The defendant, E. W. Agnew, excepted to so much of the charge as was in the following language: " The testimony which tends to show that no notice of this purchase was given to the board of

directors or their consent asked may be considered in this connection. This testimony which tends to show that the defendant had under the circumstances testified to invested one-half of the capital of the bank in that class of securities without the consent or knowledge of the board of directors may be taken into consideration in determining at that time what the intent of defendant was."

The defendant, E. W. Agnew, excepted to the following language of the court in the charge: "The rule of law in regard to intent is that intent to defraud is to be inferred from the willfully and knowingly doing that which is illegal and which in its necessary consequences and results must injure another. The intent may be presumed from the doing of a wrongful or fraudulent or illegal act, and in this case, if you find that the defendant placed that which was worthless or of little value among the assets of the bank at a greatly exaggerated value and had that exaggerated value placed to his own personal account upon the books of the bank, from such finding of fact you must necessarily infer that the intent with which he did that act was to injure or defraud the bank, but this inference or presumption is not necessarily conclusive. There may be other evidence which may satisfy the jury that there was no such intent, but such an inference or presumption throws the burden of proof upon the defendant, and the evidence must be sufficiently strong to satisfy you beyond a reasonable doubt that there was no such guilty intent in such transaction."

279

The defendant, E. W. Agnew, excepted to the following language of the court in the charge: "The misapplication and misappropriation of the credits of a bank may show a party to be guilty as well as the misapplication and misappropriation of funds or money itself. It is not necessary that a misapplication may be made in money or cash, but if the credit of a bank—if the accounts are willfully and fraudulently charged upon the books of a bank, so that a credit is placed to a certain personal account and charged to the bank, that is a willful*ly* misapplication of the credits of the bank, although it may not be in money."

The defendant, E. W. Agnew, excepted to the following language of the court in the charge: "If you find that the defendant was president of the First National Bank of Ocala, and as such president did, at or about the times charged in the indictment, place among the assets of such bank the several bonds, as shown in the testimony, at their full face value, when their value was very much less, and had such amount placed to his own personal credit and charged the same to the bank, and thereby obtained a credit from the bank of that amount upon such insufficient consideration, the natural, necessary, and legal inference is that such transaction was done to obtain such credit and such moneys or property as such credit brought without a good and valuable consideration and with intent to injure and defraud said bank, and such inference can only be overcome by testimony satisfactory to you that there was no such intent."

280

The defendant, E. W. Agnew, excepted to the following language of the court in the charge: "As I say again, gen-

tlemen, the only difficult question for you to determine is the intent of the accused. The question of the intent is to be determined by the facts and circumstances and the surroundings at the time of the transaction; but, gentlemen, the law presumes that every party who in any way attempts anything by any guarantee or anything of that kind which is dependent upon future successful operations takes the risk of the success, and that if a person commits an offence with the intent of temporarily injuring or defrauding another party or a banking institution, although it may be his intent at the time to finally recompense or prevent any injury resulting from such act, he is not protected by such intent to finally correct the temporary wrong deed, or, in this case, if you are satisfied that at the time he placed these bonds there he knew that they were worthless or of a very small value and had a large value charged to the bank and placed in his account, if he did that with the intent for the time being to injure the bank and take a wrongful advantage of the credit of the bank, no matter if at that time he had an intent to in the future remedy any injury that might come to the bank, it would not protect him in your finding or from your finding what the intent was at that time."

The defendant, E. W. Agnew, excepted to the following language of the court in the charge: "The intent of the defendant at the time he committed the transaction is the question for you to determine, and in arriving at a conclusion of that intent you
281 will carefully weigh all of the testimony in the case. If you find, as I have charged you, that he had a guilty intent at that time upon the facts charged in any of the counts, it is not necessary to find that he was guilty upon all the counts. A finding of guilty upon any one count will justify a general finding of guilty."

And the defendant, E. W. Agnew, asked the court to give the following instructions, which the court refused to give, and the defendant, E. W. Agnew, then and there excepted to the court's refusal to give the following instructions:

1st. "Every man is presumed to be innocent until he is proved guilty, and this legal presumption of innocence is to be regarded by the jury in this case as matter of evidence to the benefit of which the party is entitled. This presumption is to be treated by you as evidence giving rise to resulting proof to the full extent of its legal efficacy."

2nd. "The making of a false entry is a concrete offence which is not committed where the transaction entered actually took place and is entered exactly as it occurred."

3rd. "The truthful entry of a transaction charged as fraudulent does not constitute a false entry within the meaning of the statute."

4th. "If the jury shall find from the evidence that on the 15th day of April, 1895, E. W. Agnew, upon the receipt of the check of the Merchants' National Bank of Savannah for $3,400, used that check and the proceeds of it for the payment of a debt of the First National Bank of Ocala, then they must find upon that count in

the indictment that he did not fraudulently embezzle or misapply the check or the proceeds of it."

282 5th. "The defendant further prays the court to instruct the jury that the written guarantee introduced and filed in evidence, signed by E. W. Agnew and conditioned for the payment of the interest and principal of the bonds of the Globe Phosphate Mining Company, was upon its face a good, legal, and sufficient guarantee, and that if the jury shall find from the evidence that at the time of the delivery by E. W. Agnew to the cashier of the First National Bank of Ocala of the bonds of the Globe Phosphate Mining Company in controversy he also delivered the guarantee which has been introduced in evidence, and they shall further find from the evidence that at the time said guarantee was signed and delivered that E. W. Agnew, the defendant, was solvent and thoroughly able to respond to the obligation, and that he signed and delivered the guarantee with the knowledge of his solvency and with the intent to pay the same when demand was made upon him for payment, then the jury may find from the evidence that the defendant did not convert or misapply the money arising from the sale of the said bonds with intent to defraud the association or any one else."

The court gave the following instructions asked for by the United States attorney; to the giving of which the defendant, E. W. Agnew, then and there excepted:

1st. "The defendant is presumed to be innocent of all the charges against him until he is proven guilty by the evidence submitted to you. This presumption remains with the defendant to such time in the progress of the case as that you are satisfied of his guilt beyond a reasonable doubt."

283 2nd. "The crime of making false entries by an officer of a national bank with the intent to defraud, defined by the Revised Statutes of the United States, section 5209, includes any entry on the books of the bank which is intentionally made to represent what is not true or does not exist with the intent either to deceive its officers or to defraud the association. The crime made may be committed personally or by direction."

3rd. "The law presumes that every man intends the legitimate consequences of his own acts. Wrongful acts knowingly or intentionally committed can neither be justified or excused on the ground of innocent intent. The color of the act determines the complexion of the intent. The intent to injure or defraud is presumed when the unlawful act which results in loss or injury is proved to have been knowingly committed. It is a well-settled rule which the law applies in both criminal and civil cases that the intent is presumed and inferred from the result of the action, until some other testimony. If, therefore, the funds, moneys, or credits of the First National Bank of Ocala are shown to have been either embezzled or willfully misapplied by the accused and converted to his own use, whereby as a necessary, natural, or legitimate consequence the association's capital was reduced or placed beyond the control of the directors or its ability to meet its engagement or obligations or

to continue its business was lessened or destroyed, the intent to injure or defraud the bank may be presumed."

4th. "A reasonable doubt, as employed in criminal law, is
284 an honest, substantial misgiving generated by the insufficiency of the evidence. It is not a doubt suggested by the ingenuity of the counsel or jury unwarranted by the testimony or one born of a merciful inclination to permit the defendant to escape nor one prompted by sympathy for the defendant or those connected with him. It is a doubt as to the sufficiency of the evidence only."

After due consideration the jury returned into court and rendered a verdict of guilty.

And afterwards, on the 8th day of January, 1896, the defendant made the following motion for a new trial:

In the Circuit Court of the United States, Southern District of Florida, Regular Term, December, 1895.

UNITED STATES *vs.* ENOCH W. AGNEW. } Indictment for Violation Sec. 5209, Revised Statutes.

And now comes the defendant, Enoch W. Agnew, by E. K. Foster and E. R. Gunby, his attorneys, and moves the court for a new trial on the following grounds:

1st. That the court erred in sustaining the demurrer to the plea of abatement.

2nd. That the court erred in, over the defendant's exception, allowing such of the jurors as desired to take notes of the testimony to do so and thereby allowing W. A. McDuff, L. H. Mattair, Geo. S. Ferry, and Jacob Burkheim, jurors in the case, to take notes and memoranda of the evidence during said trial as given by the
285 witnesses on the stand.

3d. That the court erred in charging the jury as follows: "The testimony which tends to show that no notice of this purchase was given to the board of directors or their consent asked may be considered in this connection, and this testimony *that* to show that the defendant had under the circumstances shown and testified to invested one-half of the capital of the bank in that class of securities without the consent or knowledge of the board of directors may be taken into consideration in determining at that time what the intent of defendant was."

4th. That the court erred in charging the jury as follows: "The rule of law in regard to intent is that intent to defraud is to be inferred from the willfully and knowingly doing that which is illegal and which in its necessary consequences and results must injure another. The intent may be presumed from the doing of a wrongful or fraudulent or illegal act, and in this case, if you find that the defendant placed that which was worthless or of little value among the assets of the bank at a greatly exaggerated value and had that exaggerated value placed to his own personal account upon the

books of the bank, from such finding of fact you must necessarily infer that the intent with which he did that act was to injure or defraud the bank; but this inference or presumption is not necessarily conclusive. There may be other evidence which may satisfy the jury that there was no such intent; but such an inference or presumption throws the burden of proof upon the defendant, and the evidence upon him in rebuttal to do away with that presumption of guilty intent must be sufficiently strong to satisfy
286 you beyond a reasonable doubt that there was no such guilty intent in such transaction."

5th. That the court erred in charging the jury as follows: "The misapplication and misappropriation of the credits of a bank may show a party to be guilty, as well as the misapplication and misappropriation of funds or money itself. It is not necessary that a misapplication may be made in money or cash, but if the credit of a bank—if the accounts are willfully and fraudulently charged upon the books of a bank, so that a credit is placed to a certain personal account and charged to the bank, that is a willful*ly* misapplication of the credits of the bank, although it may not be in money."

6th. That the court erred in charging the jury as follows: "If you find that the defendant was president of the First National Bank of Ocala, and as such president did, at or about the times charged in the indictment, place among the assets of such bank the several bonds as shown in the testimony at their full face value when their value was very much less, and had such amount placed to his own personal credit and charged the same to the bank, and thereby obtained a credit to the bank of that amount upon such insufficient consideration, the natural, necessary, and legal inference is that such transaction was done to obtain such credit and such moneys or property as such credit brought without a good and valuable consideration and with intent to injure and defraud said bank, and such inference can only be overcome by testimony satisfactory to you that there was no such intent."

7th. The court erred in charging the jury as follows:
287 "As I say again, gentlemen, the only difficult question for you to determine is the intent of the accused. The question of the intent is to be determined by the facts and circumstances and the surroundings at the time of the transaction; but, gentlemen, the law presumes that every party who in any way attempts anything, by any guarantee or anything of that kind which is dependent upon future successful operations, takes the risk of the success; and if a person commits an offence with the intent of temporarily injuring or defrauding another party or a banking institution, although it may be his intent at the time to finally recompense or prevent any injury resulting from such act, he is not protected by such intent to finally correct the temporary wrong deed, or, in this case, if you are satisfied that at the time he placed those bonds there he knew that they were worthless or of a very small value and had a large value charged to the bank and placed in his account, if he did that with the intent for the time being to injure

the bank and take a wrongful advantage of the credit of the bank, no matter if at that time he had an intent to in the future remedy any injury that might come to the bank, it would not protect him in your finding or from your finding what the intent was at that time."

That the court erred in giving the following charge: "The intent of the defendant at the time he committed the transaction is the question for you to determine, and in arriving at a conclusion of that intent you will carefully weigh all of the testimony in the case. If you find, as I have charged you, that he had a guilty intent at that time *your verdict* upon any of the counts, it is not necessary to find that he was guilty upon all the counts. A
288 finding upon any one count will justify a general finding of guilty."

That the court erred in not giving the following instructions asked for by the defendant:

1st. "Every man is presumed to be innocent until he is proved guilty, and this legal presumption of innocence is to be regarded by the jury in this case as matter of evidence to the benefit of which the party is entitled. This presumption is to be treated by you as evidence giving rise to resulting proof to the full extent of its legal efficacy."

2d. The court erred in not giving the following instructions asked for by the defendant:

"The making of a false entry is a concrete offence which is not committed where the transaction entered actually took place and is entered exactly as it occurred."

3d. The court erred in not giving following instructions asked for by the defendant:

"The truthful entry of a transaction charged as fraudulent does not constitute a false entry within the meaning of the statute."

4th. That the court erred in not giving the following instruction asked for by the defendant:

"If the jury shall find from the evidence that on the 15th day of April, 1895, E. W. Agnew, upon the receipt of the check of the Merchants' National Bank of Savannah for $5,400, used that check and the proceeds of it for the payment of a debt of the First National Bank of Ocala, then they must find upon that count in the indictment that he did not fraudulently embezzle or misapply the check or the proceeds of it."

That the court erred in not giving the following instructions asked for by the defendant:

"The defendant further prays the court to instruct the jury
289 that the written guarantee introduced and filed in evidence, signed by E. W. Agnew and conditioned for the payment of the interest and principal of the bonds of the Globe Phosphate Mining Company, was upon its face a good, legal, and sufficient guarantee, and that if the jury shall find from the evidence that at the time of the delivery by E. W. Agnew to the cashier of the First National Bank of Ocala of the bonds of the Globe Phosphate Mining Company in controversy he also delivered the guarantee

which has been introduced in evidence, and they shall further find from the evidence that at the time said guarantee was signed and delivered that E. W. Agnew, the defendant, was solvent and thoroughly able to respond to the obligation, and that he signed and delivered the guarantee with the knowledge of his solvency and with the intent to pay the same when demand was made upon him for payment, then the jury may find from the evidence that the defendant did not convert or misapply the money arising from the sale of the said bonds with intent to defraud the association or any one else."

That the court erred in giving the following instruction asked for by the U. S. attorney:

1st. "The defendant is presumed to be innocent of all the charges against him until he is proven guilty by the evidence submitted to you. This presumption remains with the defendant to such time in the progress of the case as that you are satisfied of his guilt beyond a reasonable doubt."

2nd. That the court erred in giving the following instruction asked for by the U. S. attorney:

"The crime of making false entries by an officer of a national bank with the intent to defraud, defined by the Revised
290 Statutes of the United States, section 5209, includes any entry on the books of the bank which is intentionally made to represent what is not true or does not exist with the intent either to deceive its officers or to defraud the association. The crime made may be committed personally or by direction."

3d. That the court erred in giving the following instruction asked for by the U. S. attorney:

"The law presumes that every man intends the legitimate consequences of his own acts; wrongful acts knowingly or intentionally committed can neither be justified or excused on the ground of innocent intent. The color of the act determines the complexion of the intent. The intent to injure or defraud is presumed when the unlawful act which results in loss or injury is proved to have been knowingly committed. It is a well-settled rule, which the law applies in both criminal and civil cases, that the intent is presumed and inferred from the result of the action, until some other testimony. If, therefore, the funds, moneys, or credits of the First National Bank of Ocala are shown to have been either embezzled or willfully misapplied by the accused and converted to his own use, whereby, as a necessary, natural, or legitimate consequence the association's capital was reduced or placed beyond the control of the directors or its ability to meet its engagements or obligations or to continue its business was lessened or destroyed, the intent to injure or defraud the bank may be presumed."

That the court erred in giving the following instruction asked for by the U. S. attorney:

"A reasonable doubt as employed in criminal law is an
291 honest, substantial misgiving generated by the insufficiency of the evidence; it is not a doubt suggested by the ingenuity

of the counsel or jury unwarranted by the testimony nor one born of a merciful inclination to permit the defendant to escape nor one prompted by sympathy for the defendant or those connected with him; it is a doubt as to the sufficiency of the evidence only."

That the verdict is contrary to the evidence.

That the verdict is contrary to the law of the case.

E. K. FOSTER,
E. R. GUNBY,
Att'ys for Def't.

And on the 14th day of January, 1896, the judge did deny the same.

And thereupon the defendant entered a motion in arrest of judgment as follows:

"Now comes the defendant and moves for arrest in judgment on the ground that the indictment was found by an illegal grand jury.

FOSTER AND GUNBY,
Att'ys for Def't."

Motion denied this 14th day of January, A. D. 1896; to which the defendant excepted.

And thereupon the judge did sentence the said E. W. Agnew in language following: Ordered that Enoch W. Agnew, convicted of violation section 5209, R. S., be imprisoned by confinement in Kings County penitentiary, in Brooklyn, N. Y., for a term of five years.

And forasmuch as the foregoing facts do not appear fully of record, the defendant prays that this his bill of exceptions may be signed and sealed and made a part of the record, which is done accordingly.

JAMES W. LOCKE, *Judge.*

Jacksonville, Fla., February 6th, 1896.

292 In the United States Circuit Court, 5th Judicial Circuit, Southern District of Fla.

UNITED STATES OF AMERICA
vs.
ENOCH W. AGNEW.

I, Eugene O. Locke, clerk of the United States circuit court, fifth judicial circuit, southern district of Florida, do hereby certify that the foregoing typewritten pages, numbered from one to two hundred and ninety-one, both inclusive, contain a true copy of the record and of the assignment of errors and of all proceedings in the case of United States *vs.* Enoch W. Agnew, as appears upon the records and filed of my office.

Seal of U. S. Circuit Court, South. Dist. Florida.

In testimony whereof I hereunto set my hand and affix the seal of said court, at the city of Jacksonville, in the district and circuit aforesaid, this 8th day of February, A. D. 1896, and of our Independence the 120th.

E. O. LOCKE, *Clerk.*

Endorsed on cover: Case No. 16,191. S. Florida C. C. U. S. Term No., 901. Enoch W. Agnew, plaintiff in error, *vs.* The United States. Filed February 17, 1896.

65-36

Office Supreme Court, U. S.
FILED.
OCT 17 1896
JAMES H. McKENNEY,
CLERK.

65-36

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 447.

ENOCH W. AGNEW, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF FOR THE PLAINTIFF IN ERROR.

ELEAZER K. FOSTER,
Attorney for Plaintiff in Error.

(16,191.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

ENOCH W. AGNEW, PLAINTIFF IN ERROR,

Vs.

THE UNITED STATES.

BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

Enoch W Agnew, the plaintiff in error, was President of the First National Bank of Ocala, Fla.

On the 12th day of December, 1895, he was indicted in the United States Circuit Court for the Southern District of Florida for violation of section 5209, R. S.

The indictment contained eight counts.

The first count charged that the said Enoch W. Agnew did unlawfully misapply the moneys, funds and credits of the bank with intent to convert them to his own use, by causing a check, which it was alleged was the property of the First National Bank of Ocala, of the value of $3,400, to be entered as a credit on his personal account in the bank, his account at the time being largely overdrawn, and he largely indebted to the bank.

The second count charges that he willfully and knowingly caused a certain deposit slip to be made, by means of which he unlawfully and knowingly caused an entry to be made in Ledger 18 of the First National

Bank of Ocala, Fla., a credit to his personal account, and charging the entry to be false, and that the said Agnew well knew it to be false, and caused the same to be entered with intent to injure and defraud the association.

The third count charges him, as president, with embezzling and converting to his own use, with intent to injure and defraud the association, twenty-five hundred dollars in money.

The fourth count charges E. W. Agnew, as president, with unlawfully and willfully misapplying the moneys, funds and credits of the association with intent to convert them to his own use, and with intent to injure and defraud the association by purchasing certain bonds of the par value of five thousand dollars of the Globe Phosphate Mining and Manufacturing Company, paying for the same twenty-five hundred dollars, and that without the knowledge and consent of the banking association placed the bonds purchased as assets of the banking association, and caused to be placed to his credit and personal account upon the books of the banking association the sum of five thousand dollars, knowing the bonds he purchased to be worthless and of no commercial value, and charges him with thus willfully misapplying the moneys, funds and credits of the association.

The fifth count charges him with embezzling and converting to his own use seven thousand five hundred dollars of the moneys, funds and credits of the banking association with intent to injure and defraud the association.

The sixth count charges him with misapplying the moneys, funds and credits of the banking association and converting the same to his own use by purchasing, ostensibly as president of the association, certain bonds of the Globe Phosphate Mining and Manufacturing Company of the par value of ten thousand dollars for twenty-five hundred dollars, and without the knowledge and consent of the banking association, did place the said ten thousand dollars of the bonds of the Globe Phosphate Company as part of the assets of the banking association, and cause to be credited to his own personal account the sum of ten thousand dollars on the books of the association; he then and there well knowing that the bonds were worthless and of no commercial value, and thus misapplying seven thousand five hundred dollars of the moneys, funds and credits of the association.

The seventh count charges him with embezzling and converting to his own use, with intent to injure and defraud the association, seven thousand five hundred dollars of the moneys of the association.

The eighth count charges him with misapplying the funds, moneys and credits of the bank by purchasing ten thousand dollars of the bonds of the Globe Phosphate Mining Company for twenty-five hundred dollars, placing them, without consent of the association, amongst the assets of the association at ten thousand dollars, and causing a credit of ten thousand dollars to be placed to his credit on the books of the association, and thus misapplying seven thousand five hundred dollars of the money, funds and credits of the association with intent to convert the same to his own use.

Upon being arraigned upon the above indictment the defendant, E. W. Agnew, filed a plea in abatement, to which plea the United States filed a demurrer. The defendant joined issue on the demurrer, and, after argument, the Court sustained the demurrer The defendant excepted to the ruling, and the defendant, upon being required to plead, plead not guilty and the case was called for trial.

A concise statement of the evidence offered at the trial is as follows: After identifying the books of the bank, a Mr. Williams testified to the following transaction on the part of Mr. Agnew: On the 13th of April, 1895, Mr. Agnew asked Mr. Williams' collection clerk in the bank to make out a deposit slip. Mr. Williams asked to whose credit should it be made out. Mr. Agnew answered to his (Agnew's) credit The slip—Exhibit C in the record—was as follows:

DEPOSITED IN THE FIRST NATIONAL BANK OF OCALA, FLA., BY E. W. AGNEW.

4, 1895.

PLEASE LIST EACH CHECK SEPARATELY.

	Dollars.	Cts.
Bank notes	$	
Gold		
Silver		
Checks	3,400	00
Sav	5,950	00
	$9,350	00

The witness made out the slip as Mr. Agnew called off the items to be entered. The abbreviation Sav. was for Savannah, and represented two checks on Savannah, drawn by persons in Savannah on Merchants' National Bank of Savannah.

Mr. McIntyre testifies that he took the two checks entered on the deposit slip (they were given to him either by Mr. Agnew or Mr. Massey, an

employe of the bank) and carried them to Jacksonville and gave them to the National Bank of the State of Florida to take up two certificates of deposit issued by the First National Bank of Ocala. He swears that he used the identical check entered on the deposit slip previously testified to to take up the indebtedness of the First National Bank of Ocala.

Mr. Huber testifies that the First National Bank of Ocala owned stock of the Marion Phosphate Company in April, 1895, namely, seventeen hundred shares. This was the stock that was sold in Savannah and brought thirty-four hundred dollars, which thirty-four hundred dollars was evidenced by the check and the deposit slip made out by Mr. Williams and credited to Mr. Agnew's account in the bank. Mr. Huber testifies that the books nowhere show that the thirty-four hundred dollars, which the stock brought, was ever credited on the stocks and bond account of the bank.

Mr. J. K. McDonald testifies that he was made receiver of the First National Bank of Ocala by the Comptroller of Currency, and took possession of the bank and property; that on examining the assets he found that a certificate representing seventeen hundred shares of the Marion Phosphate Company's stock was missing from the assets; that he called in Mr. Agnew, the defendant, and asked him if he knew where the certificate was; Mr. Agnew told him that he did not know, and later said that Mr. Huber was custodian, and that Mr. Huber had had it several days prior to the conversation and that he could tell Mr. McDonald where it was. He (Mr. Agnew) said it was in the safe, and that if looked for it could be found; that Mr. Huber could tell what was done with it; that during that conversation Mr. Agnew said nothing about the stocks being sold. Mr. McDonald then testifies as to the correct method of bookkeeping and entries, where stock belonging to the bank was sold. Mr. McDonald then testifies to finding that the stock was sold for thirty-four hundred dollars, and on deposit slip credited to Mr. Agnew's private account, and so entered on the books of the bank; that after he found that the stock had been sold and credited to Mr. Agnew's account he asked Mr. Agnew where the certificate of stock was, telling him that it was not with the other securities, and that Mr. Agnew told him that it must be there.

He also testified that the books show Mr. Agnew's account overdrawn seven thousand dollars when he, as receiver, took charge of the bank.

(Upon cross-examination he stated that Mr. Agnew was assisting him in his investigation and that Mr Agnew seemed very greatly worried, but he did not notice that he was particularly excited, nervous or anything like that.)

Mr. Mayo testifies to having made out a charge ticket, which he explains to be that if the bank cashed a man's check for a certain amount, and the man had not the amount of money to his credit, the bank was not supposed to charge the check up and have the account overdrawn, but made a slip of it and carried it as a cash item until the bank made some disposition of it or the person made his account good for that amount. The charge ticket was filed in evidence and marked Exhibit B.

John A. Bishop testifies as to his transaction with Mr. Agnew in regard to the sale of bonds of the Globe Phosphate Mining and Manufacturing Company; that he first sold five bonds of the Phosphate Company for fifty cents on the dollar, being twenty-five hundred dollars; that he subsequently sold thirty-five thousand dollars of the bonds to Mr. Agnew; that Mr. Agnew told him he was purchasing the same for himself; that at the time he sold the first five thousand dollars' worth of bonds to Mr. Agnew the Phosphate Company was insolvent; that Mr. Agnew was a director and stockholder at the time in the Globe Phosphate Company; that he (the witness) at the time of the sale of the bonds did not consider that the bonds had any market value; that he had failed to sell any; that after the first sale of the bonds the company was in a very much better condition than it was at the time the bonds were issued; that the company had never been in a good financial condition, nor ever mined phosphate and marketed the same to pay any interest on the stock; that it had dissensions in the company and the courts stopped its operations; that he tried to sell the bonds in New York, but did not get a single offer; that there was a judgment against the company; that a Mr. Page had a claim upon two hundred and eighty acres of the land, and there was a mortgage of record, which was, however, a disputed claim.

Upon cross-examination—That the company issued two million three hundred thousand dollars in stock; that the par value of the stock was one hundred dollars; that he had himself four hundred thousand dollars of the stock of the company and was its president; that after the sale of the first five thousand dollars of the bonds to Mr Agnew they paid off the taxes and redeemed the land; that at the time he spoke of the company being insolvent his reason for saying so was because the taxes had not been paid and the lands had been forfeited to the State; that some of the land had passed out of the State before their redemption, some thousand or two thousand acres; that they had then about eight thousand five hundred acres; that the mortgage he testified about had never been foreclosed, and he, representing the company, was fighting its foreclosure; that there was a floating indebtedness of the company to about thirty thousand dollars; that the

mortgage was in the neighborhood of twelve thousand dollars; that it cost the company about twenty-five hundred dollars to redeem the land from tax sales; that at the time he went to New York to sell the bonds he considered the property of the company to be about one hundred and fifty thousand dollars; that it was bonded for one hundred thousand dollars; that its value was based on how it should be handled; that after the titles were more definitely fixed and they had recovered their equities and got into something like shape, and strong management would have taken hold of it, it would have assumed altogether a different position. He stated that he never represented the value of the property in New York at all, except to say it was good security; that he always made such a statement as he had made before the court; that his own bank and the bank Mr. Agnew was president of took ten thousand dollars of the bonds; that it was done to give the bonds a better credit; that Mr. Agnew purchased the bonds from him (Bishop), president of the Phosphate Company, and that he gave a deposit slip in the bank for them to his (Bishop's) brother, depositing the money to the credit of the Globe Company; that he will not swear positively, but does not think Mr. Agnew gave a check for them; that the understanding between him and Mr. Agnew was that the first bonds were sold to the bank; that since the sale differences arose between him and Mr. Agnew and he was not friendly towards him; that he (the witness) was under indictment with reference to the issuing of those bonds, and that he believed his prosecution was instigated by Mr. Agnew; that he was so informed; that he was arrested after he had been a witness before the United States grand jury against Mr. Agnew; that the property at the time of the second sale of bonds to Mr. Agnew consisted of a large plant of washers, hoisting machinery, railroad tracks, uncovered rock and saw mill, the value being fifteen or twenty thousand dollars; that the phosphate property of the Globe Company had chances of being valuable; that he paid $27,000 for his four hundred thousand dollars worth of stock; that the number of bonds issued was one hundred thousand, but that there was some dispute as to the issuing of twenty thousand; that in 1893 and the early part of 1894 the value of phosphate property was more valuable than at the time he was testifying; that some phosphate properties could be bought much cheaper in 1896; other tracts could be sold for very nearly as much as when first bought. Upon redirect Mr. Bishop stated that he considered the 280 acres upon which the mortgage existed the best part of the tract, and valuing the whole at twenty thousand dollars, if he could not get the two hundred and eighty acres he would not give over five or six thousand for the balance. He further said that if it had not been for his relation to the company he would not have let his bank purchase the bonds at all; that about

five thousand acres of the lands owned by the company had a very fair title. The remainder of the lands were more or less under a cloud.

He further testified that Mr. Agnew was interested in the Globe Company before he was; that he never made any representations to Mr. Agnew as to the value of the property, and he thought Mr. Agnew knew more about its value than he did; that the books of the Globe Company show that Mr. Agnew had four hundred and eighty shares of the stock prior to his (Bishop) going in to the company; that he believed Mr. Agnew held some of the company's stock as collateral security for the bank, and in addition to that held some in his own name; that he did not make any representations to Mr. Agnew as to its value and to induce him to go in equally with him; on the contrary, Mr. Agnew made representations to him and told him he could control seven or eight thousand shares, and that we could make a pool; that the information upon which he (Bishop) was arrested was not sworn out by Mr. Agnew.

Mr. McIntyre testified that he was cashier of the First National Bank of Ocala; that he made out a deposit ticket at the request of Mr. Agnew; that the ticket was as follows:

DEPOSITED IN THE FIRST NATIONAL BANK OF OCALA, FLA., BY E. W. AGNEW.

May 12, 1894.

PLEASE LIST EACH CHECK SEPARATELY.

	Dollars.	Cts.
Bank notes	$	.....
Gold		.....
Silver		.....
Checks	10,000	00

Written across the face:

BONDS OF GLOBE PHOSPHATE CO.

That he also made out another deposit slip at Mr. Agnew's request, as follows:

DEPOSITED IN THE FIRST NATIONAL BANK OF OCALA, FLA., BY E. W. AGNEW.

Feb. 12, 1894.

PLEASE LIST EACH CHECK SEPARATELY.

	Dollars.	Cts.
Bank notes	$	
Gold		
Silver		
Checks, bonds	10,000	00
	$10,000	00
Less cash item	9,177	49
	$ 822	50

That the entries on slips were in his handwriting; that bonds meant Globe Phosphate Company bonds; that he had the bonds in his possession when he made the deposit tickets; that the bonds were one thousand dollars each; that Mr. Agnew asked him to give him credit for the bonds $10,000; that the entry less cash items meant some memoranda in the drawer against Mr. Agnew, representing cash he owed the bank; that at the time of making the deposit ticket of May 12, 1894, Mr. Agnew said: "Here's ten thousand dollars of bonds; place these to my credit; I will guarantee the bonds to be all right; give you a written guarantee the principal and interest will be paid." That he made a debit entry to correspond with the credits of twenty thousand dollars; that he charged them to stocks and bonds account; that it was charged to the account and became an asset of the bank; that they were turned in to the bank at their par value; that the bank carried those bonds as assets as long as he was cashier; that he ceased to be cashier in June, 1894; that they were properly listed and entered up as assets of the bank upon the books of the bank and were reported as assets to the Treasury Department every time a report was made; that they were carried as assets of the bank at par value and reported to the Comptroller of the Currency.

Mr. J. V. Burke testified that he was a director in the Globe Phosphate Company in February, 1894, and in May, 1894; that one hundred thousand dollars of bonds were issued; that he did not know of any other issue. He could not say how many were sold; that he knew ten thousand dollars of them were ordered by the Board of Directors to be placed on the market; he did not know of any more.

Mr. McIntyre recalled, after examining the records of the minutes of the directors' meeting, testified that there was no consent given by the Directors of the bank, nor by the stockholders of the association, that the two items of $10,000 should be placed to the credit of Mr. Agnew.

Mr W. S. Bullock testified that he was Vice-President and director of the bank during the year 1894; that he attended the meeting of the directors unless sick or out of the city; that at no meeting of directors that he attended or heard of did the directors consent to or authorize that ten thousand dollars should be credited to E. W. Agnew's personal account on account of twenty of the bonds of the Globe Phosphate Company on February 12, 1894, nor that $10,000 should be credited to the personal account of E. W. Agnew on account of ten bonds of the Globe Phosphate Company May 12, 1894; nor did the directors, to his knowledge, ever authorize the President, E. W. Agnew, to purchase twenty thousand dollars of the bonds of the Globe Phosphate Company,

Upon cross-examination he said:

"We were figure-head directors. I know nothing about the bank; had every confidence in Mr. Agnew; that the directors had nothing to do with the running of the bank or its details, and were not consulted in any way, shape or form. Mr. Agnew owned nearly all the stock, and we had the utmost confidence in him; he just managed the whole thing; that was my feeling about it. I don't know how the other directors felt. That is about the way it was done; that he did not know that the bank owned the Globe Phosphate bonds until after the failure; that he was in the habit of signing reports of the bank to the Comptroller of the Currency; that he did not know whether the Globe Phosphate bonds were specifically listed among the assets of the bank; that he would go to Mr. Huber, cashier, and Mr. McIntyre and say: 'Look here, gentlemen, is this exactly correct as these books show?' and they opened the books and said: 'Yes, here's the books, look for yourself;' and I looked a little bit without much examination and was satisfied it was all right and signed it."

Mr. McIntyre identifies the entries of January 12th, 1894, Feb. 12th, 1894, and May 12th, 1894, in cash book as showing that the bank purchased at the par value the Globe Phosphate bonds $5,000, $10,000, and $10,000, and entered them as assets at those values.

Mr. McDonald, recalled, stated that after he became receiver he looked for and could not find the deposit ticket representing the purchase of the $5,000 bonds of the Globe Phosphate Company; that he asked Mr. Agnew

concerning the purchase of the Globe Phosphate Company bonds, and asked him what the bank paid for them, and Mr. Agnew stated that they paid par for them. Mr. Agnew also stated that he could sell the bonds within a week if he had them; that they were pledged in Chicago and New York as collateral security on the bank's liabilities; that he could sell the bonds within a week at par; that he told Mr. Agnew that if he could get a purchaser he would get the bonds released, and that he begged and insisted on his selling them at 50 cents or less if he could, but he never did

Mr. Mayo identified the entry of Globe Phosphate bonds numbered from 61 to 79 inclusive, as entered as assets of the bank for $10,000.

Mr. James A. Griffin testified that he was an employe of the bank and was known as the individual bookkeeper; that his books showed the individual accounts of deposit. He testified to the entry to the credit of E. W. Agnew on the 15th day of April, 1895, of three items, two of five thousand each and one for nine thousand three hundred and fifty dollars. He was shown deposit slip—Exhibit C—and said that it compared with the entry in amount, but not in date; that there was no other entry of nine thousand three hundred and fifty dollars in April; that he would not have made the entry unless from a deposit slip. He also testified to a credit on February 12, 1894, of $822.51 to the account of E. W. Agnew, and identified Exhibit K as the deposit slip from which he made the entry; that in February, 1894, there was no other credit to Mr. Agnew's account of $822 51; that on May 12, 1894, there was a credit to the account of E. W. Agnew of ten thousand dollars.

Exhibit J was shown witness, who said the entry was made from that or a similar slip; that there was no other entry of ten thousand dollars in May, 1894. He also stated that on April 15, 1895, Mr. Agnew's account, as shown by the books of the bank, was overdrawn $1,847.39; that at that time the items embraced in Exhibit E had not been charged to Mr. Agnew's account.

On cross-examination he testified that in addition to the item on the slip there was placed to Mr. Agnew's credit that day two deposits of five thousand dollars each. Mr. Martin was called as a witness, but his testimony was not completed and does not bear on the case at bar.

Mr. McDonald being recalled testified as to the effect of the entry of $3,400 to the credit of Mr. Agnew, stating that if a check for $3,400 payable to the bank and payable to the order of the bank should be credited to

the personal account of the president of the bank and afterwards should be applied to the payment of the bank's indebtedness, it would have the effect to divert the funds of the bank from their legitimate use; the check being the property of the bank in the first place and coming into the possession of the bank through an improper source and then being applied to the payment of the bank's indebtedness, the bank would secure no benefit whatever from the check, because when it was credited to the account of a person not entitled to it, the bank thereby paid so much money for the check, and when it paid it out on its own indebtedness it simply liquidated so much of its own indebtedness with a check that had come in for which it had paid dollar for dollar to another person.

On cross-examination, Mr. McDonald, in answer to the question could not the $3,400 which was credited to Mr. Agnew have been corrected as an absolute mistake on the books of the bank, and the accounts properly adjusted without injury to the bank, said it could have been done by charging Mr. Agnew's account $3,400 and crediting stocks and bonds account $3,400, without the handling or change of any actual funds of the bank, but with the effect of placing $3,400 assets into the bank that it had not before the change. In answer to the question, "Would it not have shown that if the transaction had been thus credited that the bonds were sold and the proceeds used to pay a bank debt?" witness said yes, and that the proper thing to have done would have been an entry charging Mr. Agnew with $3,400 and crediting stocks and bonds account. That would have corrected the wrong entry in the first place. To a juror he said: "The idea is this, that if he had replaced the money or made a credit to stocks and bonds account, and charged himself with $3,400, that would have corrected the books, or if he had paid in so much money, cash $3,400, and credited stock and securities, it would have corrected the books; he could have corrected the books either by making a charge to his own account, $3,400, or by paying $3,400 in cash and crediting stocks and bonds account. As the matter now stands, stocks and bonds account do not show any credit for that $3,400 at all. When I turned over the affairs of the bank to my successor, in August, it still stood as a credit to Mr. Agnew, and still stood as a charge or an asset on the stocks and bonds account."

Mr. Griffin, recalled, testified that on January 12, 1894, at the close of business, Mr. Agnew's account was overdrawn $7,088.36. He owed the bank that much. February 12, 1894, it was overdrawn $980.92. On May 12, 1894, it was overdrawn $161.77.

The Government here rested its case, and the defendants called C. M. Brown, who testified that he was familiar with the value and character of the lands of the Globe Phosphate Company in the spring of 1894; that he could not tell whether his valuation in 1894 was on 271 acres or the whole 5,000, but that he valued it at one dollar per ton of phosphate that it would yield, and he thought there was two hundred thousand tons of rock on it; that he pitted it well.

Upon cross-examination, he stated that phosphate rock in the spring of 1894 was low—hardly any market for it; that the 271 acres was the most valuable portion of it. He describes the character of his examination, and that he not only pitted it, but also rodded it all over, probably for twenty feet, then pitted it, and that from an analysis made it was high grade phosphate.

On redirect, he said it was the finest body of phosphate he ever saw.

Mr. Upton testified that he was acquainted with a part of the phosphate property of the Globe Phosphate Mining Company: that he had been on the property and furnished the machinery for it; that he placed a valuation on the property about two years previous to his testifying and thought it a cheap property at $100,000; that his valuation was on the property that had been worked and pitted,

Upon cross-examination, he stated that he reached his estimate by going over the property carefully and taking some measurements and calculating as nearly as he could at the time the amount of phosphate that there was there; by measuring the thickness of that part of the deposit he could see, and the extent of ground covered or pitted; he did not claim to have seen the lands only where the machinery was; that he had some knowledge of such property from being a director in the High Springs Company and from furnishing machinery to other companies and examining their plants; that he furnished the machinery to the Globe Company for part cash and part in obligations of Messrs. Agnew and Bishop.

Alex McIntyre testified to a guarantee Mr. Agnew signed February 12th, 1894, marked Exhibit No. 1; he also stated that in his reports to the comproller he stated that the Globe Company bonds were guaranteed by Mr. Agnew.

On cross-examination he stated that he left the bank in June, 1894, and up to the time he left Mr. Agnew did not pay any interest on the bonds

nor any principal; he could not swear that Mr. Agnew was heavily indebted at that time; he (Agnew) placed some papers on record after the failure dating back to 1893 and 1894, but the debts he knew of would not be considered so very large in proportion with what Mr. Agnew was reported to be worth; he stated that he tendered his resignation as cashier because he was not altogether satisfied with the business.

Mr. Huber was called; he identified the guarantee and stated that he sent it to New York when the bonds were sent to New York under a sepperate cover.

W. B. Barnett testified that he was president of the National Bank of Jacksonville, Fla.; that he had been in the banking business eighteen years; that he had known Mr. Agnew about fifteen years.

To him was put the question: "Are you sufficiently acquainted with Mr. Agnew's standing in the spring of 1894 to testify as to whether or not you considered his guarantee or endorsement at the time good for twenty thousand dollars?" The United States attorney objected to the question, and after argument the objection was sustained.

The defendant then called a Mr. Stewart, who testified that he was agent and had charge of R. G. Dun & Co.'s offices, a commercial agency; that he had a record of the financial condition of E. W. Agnew in the early part of 1894. Upon being asked what was the commercial rating of E. W. Agnew at that time, the Court would not allow the question answered, and to this ruling the defendant excepted.

The defendant, E. W. Agnew, offered himself as a witness, and stated that he had been in business in Ocala, Florida, since 1865; that he was the president of the First National Bank of Ocala; that the bank was organized in 1886; that in the spring of 1894 he considered himself, at a low rating, worth three hundred thousand dollars; that he had eighty thousand dollars in stocks and forty thousand dollars in orange groves, several thousand dollars in other realty, and was in mercantile business, in which invoices showed, with stock of goods and all, for the year, $450,000, he owning a two-thirds interest in that. He stated that the $3,400 was for 1,700 shares of the Marion Phosphate Company; that at the same time he sold some shares of his own, and the $9,350 was the sum the sale of the shares (his own and the bank's) brought; that he handed them to Mr. Williams and said, "Please credit these up at once, because I want to hand to Mr. Comer Massey, and want him to write Mr. Stockton;" that the whole amount went to pay a bank debt; that he handed the checks to Mr. Williams for

him to credit them up; that Mr. Williams had been bookkeeper for two years, and he supposed he knew they were the bank's, and he never knew any better until after the bank suspended; he denied ever buying five thousand dollars of the Globe Phosphate Mining Company for the bank; that he bought them for himself, on his own account He also stated he owned between thirty thousand and forty thousand acres of unimproved land, and that he thought it worth two dollars per acre.

On cross-examination, he stated that about two-thirds of the unimproved land was held under tax titles; that he had mortgages on the property, and the parties neglecting to pay the taxes, he had to take the property; he first stated that practically all his property was covered by a mortgage in the spring of 1894.

Upon redirect, he corrected that statement, saying it was only on two pieces of property; he then specifies his stocks as being First National Bank of Ocala stock, and that he counted also the surplus, which was at that time forty-seven thousand dollars; fifteen thousand dollars in Ocala Hotel Company stock, which was not worth much; twelve thousand dollars in Marti City, and that the liabilities of his mercantile firm in spring of 1894 were about one hundred and twenty-five thousand dollars; that in his valuation of four hundred and fifty thousand dollars he included various debts due the firm; that since then the firm has failed; he stated that he did have a conversation with the witness, Mr. Williams; that he simply wanted him to tell the truth; that this was correct; that Mr. Williams said he was not positive one way or the other; that he had sixty shares of the First National Bank pledged as collateral in the spring of 1894. The defendant rested his case.

The United States recalled Mr. McDonald, who testified that during his receivership Mr. Agnew had never paid any interest or any portion of the principal of the Globe Phosphate Company bonds.

Mr. Stapleton was recalled and testified to the fact that during his receivership, up to the time of his testifying, Mr. Agnew had paid neither interest or any portion of the principal of the Globe Phosphate bonds.

Upon cross-examination, he stated he had not made any demand on Mr. Agnew for either interest or principal.

Mr. McDonald was recalled by the United States again and testified that he had examined the books of the bank to see whether any interest or

any portion of the principal of the Globe Phosphate Company bonds had ever been paid by Mr. Agnew, but could not find any record of it; that he had never demanded payment of the interest from Mr Agnew.

The following are the errors assigned:

First assignment of error. That the court erred in sustaining the demurrer to the defendant's plea in abatement.

For the second assignment of error the defendant sets forth that on the empanelling of the jury L. H. Mattair, a juror, addressed the court as follows: "Can we take notes and jot down any items on paper?" to which question the court replied: Certainly; you have a right to assist your memory in any way that is consistent with your conscience. And subsequently, after some testimony had been offered, the court further on said point addressed the jury as follows: I will say, gentlemen of the jury, that in the matter of permitting jurymen to take such notes as he sees fit, I do not desire or consent that these notes shall in any way control the minds of any other jurors at all; it is simply for his own personal convenience; and, gentlemen, I want you to understand that your memory and recollection of the testimony is to be the controlling element in enabling you to arrive at a just verdict in this case, and in permitting the juror to take such notes as he may see fit I do not desire the jury to understand that those notes are at all in any way to influence you in the least. I thought I would call your attention to this fact.

Third assignment of error. That the court erred in admitting the cash bocks and the entries thereon as offered by the United States in the testimony of one Massey, a witness introduced by the United States, and in refusing to strike all the testimony of said witness in reference to said cash books and the entries thereon made by him from the evidence as irrelevant and improper.

Fourth assignment of error. That the court erred in refusing to allow the witness Alex McIntyre to answer the question put to him by the defendant's counsel, "Do you know what his commercial rating was at that time?"

Fifth assignment of error. That the court erred in allowing, over the defendant's objection, the witness Alex McIntyre to be asked "why he re-

signed as cashier of the bank in June, 1894," and permitting him to answer said questions.

Sixth assignment of error. That the court erred in refusing to allow the witness, W. B. Barnett, to testify as to whether Mr. Agnew's guarantee for $20,000 at the time he made it was good, and in striking out the testimony of the witness, W. B. Barnett.

Seventh assignment of error. That the court erred in not allowing the witness Stuart to testify as to the rating of the Dunn Commercial Agency of E W. Agnew at the time he gave the guarantee for $20,000.

Eighth assignment of error. That the court erred in not allowing the defendant, E. W. Agnew, while testifying, to answer the following question: "From the information you got and the investigation you made, what was the value of the Globe Phosphate Company lands at the time you purchased?"

Ninth assignment of error. That the court allowed the United States attorney to ask the defendant, E. W. Agnew, when he was testifying in his behalf, the following question and requiring an answer to the same: "Isn't it true that the firm of E. W. Agnew & Co. has been swept out of existence and could not pay its liabilities?"

Tenth assignment of errors. That the court erred in giving to the jury the following charges: "The testimony which tends to show that no notice of this purchase was given to the Board of Directors or their consent asked may be considered in this connection. This testimony, which tends to show that the defendant had under the circumstances testified to show invested one-half of the capital of the bank in that class of securities without the consent or knowledge of the Board of Directors, may be taken into consideration in determining at that time what the intent of the defendant was.

"The rule of the law in regard to intent is that intent to defraud is to be inferred from wilfully and knowingly doing that which is illegal and which, in its necessary consequences and results, must injure another. The intent may be presumed from the doing of the wrongful or fraudulent or illegal act, and in this case, if you find that the defendant placed that which was worthless or of little value among the assets of the bank at a greatly exaggerated value, and had that exaggerated value placed to his own personal account upon the books of the bank, from such finding of fact you must necessarily infer that the intent with which he did that act was to injure or defraud the bank, but this inference or presumption is not neces-

sarily conclusive. There may be other evidence which may satisfy the jury that there was no such intent, but such an inference or presumption throws the burden of proof upon the defendant, and the evidence upon him in rebuttal to do away with that presumption of guilty intent must be sufficiently strong to satisfy you beyond a reasonable doubt that there was no such guilty intent in such transaction.

"The misapplication and misappropriation of the credits of a bank may show a party to be guilty as well as the misapplication and misappropriation of funds or money itself. It is not necessary that a misapplication be made in money or cash, but if the credit of a bank—if the accounts are willfully and fraudulently changed upon the books of a bank so that a credit is placed to a certain personal account and charged to the bank, that is a willful misapplication of the credits of the bank, although it may not be in money.

"If you find that the defendant was president of the First National Bank of Ocala, and as such president did, at or about the times charged in the indictment, place among the assets of such bank the several bonds, as shown in the testimony, at their full face value, when their value was very much less, and had such amount placed to his own personal credit and charged the same to the bank, and thereby obtained a credit from the bank of that amount upon such insufficient consideration, the natural, necessary, and legal inference is that such transaction was done to obtain such credit and such moneys or property as such credit brought without a good and valuable consideration, and with intent to injure and defraud said bank, and such inference can only be overcome by testimony satisfactory to you that there was no such intent.

"As I say again, gentlemen, the only difficult question for you to determine is the intent of the accused. The question of the intent is to be determined by the facts and circumstances and the surroundings at the time of the transaction; but, gentlemen, the law presumes that every party who in any way attempts anything, by any guarantee or anything of that kind which is dependent upon future successful operations, takes the risk of the success, and that if a person commits an offence with the intent of temporarily injuring or defrauding another party or a banking institution, although it may be his intent at the time to finally recompense or prevent any injury resulting from such act, he is not protected by such intent to finally correct the temporary wrong deed; or, in this case, if you are satisfied that at the time he placed those bonds there he knew that they were worthless or of a very small value, and had a large value charged to the bank and placed to his account, if he did that with the intent for the time being to injure the bank, and take a wrongful advantage of the credit of the bank, no matter if at that time he had an intent to in the future remedy

any injury that might come to the bank, it would not protect him in your finding or from your finding what the intent was at the time.

"The intent of the defendant at the time he committed the transaction is the question for you to determine, and in arriving at a conclusion of that intent you will carefully weigh all of the testimony in the case. If you find, as I have charged you, that he had a guilty intent at that time upon the facts charged in any of the counts, it is not necessary to find that he was guilty upon all the counts. A finding upon any one count will justify a general finding of guilty."

Eleventh. That the Court erred in giving the following instruction asked for by the U. S. attorney: "The defendant is presumed to be innocent of all the charges against him until he is proven guilty by the evidence submitted to you. This presumption remains with the defendant to such time in the progress of the case as that you are satisfied of his guilt beyond a reasonable doubt."

Twelfth. That the Court erred in giving the following instruction asked for by the U. S. attorney: "The crime of making false entries by an officer of a national bank with the intent to defraud, defined in the Revised Statutes of the United States, section 5209, includes any entry on the books of the bank which is intentionally made to represent what is not true or does not exist, with the intent either to deceive its officers or to defraud the association The crime may be committed personally or by direction. Therefore the entry of a slip upon the books of the bank, if the matter contained in that deposit slip is not true, is a false entry. If the statement made upon the deposit slip is false, the entry of it in the bank and the books of the bank is false."

Thirteenth. That the Court erred in giving the following instruction asked for by the U. S. attorney: "The law presumes that every man intends the legitimate consequence of his own acts. Wrongful acts, knowingly or intentionally committed, can neither be justified or excused on the ground of innocent intent. The color of the act determines the complexion of the intent. The intent to injure or defraud is presumed when the unlawful act which results in loss or injury is proved to have been knowingly committed. It is a well-settled rule, which the law applies in both criminal and civil cases, that the intent is presumed and inferred from the result of the actions. If, therefore, the funds, moneys or credits of the First National Bank of Ocala are shown to have been either embezzled or willfully misapplied by the accused and converted to his own use, whereby as a necessary, natural or legitimate consequence the association's capital

was reduced or placed beyond the control of the directors, or its ability to meet its engagements or obligations, or to continue its business, was lessened or destroyed, the intent to injure or defraud the bank may be presumed."

Fourteenth. That the Court erred in giving the following instruction asked for by the U. S. attorney: "A reasonable doubt, as employed in criminal law, is an honest, substantial misgiving, generated by the insufficiency of the evidence; it is not a doubt suggested by the ingenuity of the counsel or jury, unwarranted by the testimony, nor one born of a merciful inclination to permit the defendant to escape, nor one prompted by sympathy for the defendant or those connected with him; it is a doubt as to the sufficiency of the evidence only."

Fifteenth. That the court erred in not giving the following instructions asked for by the defendant: "Every man is presumed to be innocent until he is proven guilty, and this legal presumption of innocence is to be regarded by the jury in this case as matter of evidence to the benefit of which the party is entitled. This presumption is to be treated by you as evidence giving rise to resulting proof to the full extent of its legal efficacy."

Sixteenth. "The making of a false entry is a concrete offense, which is not committed where the transaction entered actually took place and is entered exactly as it occurred."

Seventeenth. "The truthful entry of a transaction charged as fraudulent does not constitute a false entry within the meaning of the statute."

Eighteenth. "If the jury shall find from the evidence that on the 15th day of April, A. D., 1895, E. W. Agnew, upon receipt of the check of the Merchants' National Bank of Savannah for $3,400, used that check and the proceeds of it for the payment of a debt of the First National Bank of Ocala, then they must find upon that count in the indictment that he did not fraudulently embezzle or misapply the check or the proceeds of it."

Nineteenth. That the court erred in not giving the following instruction also asked for by the defendant: "That the written guarantee introduced and filed in evidence, signed by E. W. Agnew, and conditioned for the payment of the interest and principal of the bonds of the Globe Phosphate Mining Company was upon its face a good, legal, and sufficient guarantee, and that if the jury shall find from the evidence that at the time of the delivery by E. W. Agnew to the cashier of the First National Bank of

Ocala of the bonds of the Globe Phosphate Mining Company in controversy he also delivered the guarantee which has been introduced in evidence, and they shall further find from the evidence that at the time said guarantee was signed and delivered that E. W. Agnew, the defendant, was solvent and thoroughly able to respond to the obligation, and that he signed and delivered the guarantee with the knowledge of his solvency and with intent to pay the same when demand was made upon him for payment, then the jury may find from the evidence that the defendant did not invest or misapply the money arising from the sale of the said bonds with intent to defraud the association or any one else."

That the court erred in not granting the motion for new trial.

That the court erred in not granting the motion in arrest of judgment.

E. K. FOSTER,
Att'y for Defendant.

The first error assigned is that the Court erred in sustaining the demurrer to the defendant's plea in abatement, which plea is found on page 16 of the record, which plea was in the following words:

UNITED STATES
vs.
E. W. AGNEW.
} Indictment for Violation of Section 5209, R. S.

And the said Enoch W. Agnew, in his own proper person, comes into court here, and, having heard the said indictment read, says that the Grand Jury which found said indictment was an illegal Grand Jury in this, that after sixteen had failed to attend upon the regular venire, the Court ordered that a special venire issue for ten grand jurors, to be drawn according to law; said grand jurors so ordered by the Court were directed to be taken from the County of Duval; that the Clerk and Marshal, in drawing said venire, whenever a name was legally drawn from the box, if said party so drawn was not from the County of Duval, laid aside said name and continued drawing until ten names from the County of Duval were obtained, and which illegal drawing of said venire tended to the prejudice of this defendant, and the court, on excusing three returned on the second venire, ordered that four names be drawn for jurors to complete the panel; that said jurors were ordered to be drawn from the box, and the clerk and marshal drawing the same were ordered to take those that were from Duval County, as they came from the box, and the said clerk and marshal, as the

names were drawn, rejected and did not place on the venire such names so drawn, but rejected and laid them aside until names came out of the box of parties resident of Duval County, which drawing was illegal and tended to the prejudice of the defendant, and upon said venire being returned showing A. K. Leon and Julius Kaufman summoned and Alex. Sabel and Frank Robinson not found, the court ordered that four names be drawn from the box and in said order directed that said four names should be taken from the County of Duval; that the said United States marshal and clerk in obedience to said order drew from the box more than four names and when the names were of persons not resident of Duval County, rejected and laid them aside and continued drawing until Dennis A. Andrew, Benjamin F. Manier, John L. Marvin and Samuel Morris were drawn, and so John L. Marvin, John E. Onley, G. L. Anderson, Charles E. Bell, W. G. Candlick, A. R. Paxon and Dennis Andrew were drawn illegally by said marshal and clerk, and not in accordance with the statute of the United States, in such case made and provided, which requires that when less than sixteen attend the court shall order the marshal to summons from the body of the district and not from the bystanders, a sufficient number of persons to complete the Grand Jury; and so the names of many persons who were duly drawn from the jury box were not placed upon the venire, but were, in pursuance of the aforesaid orders, after being drawn from the box, rejected and laid aside by the clerk and marshal drawing the same for the purpose of completing the Grand Jury from the residents of the County of Duval; and the defendant says that he was entitled to have the said Grand Jury completed according to law; and the said Grand Jury so empanelled and sworn as aforesaid was not drawn and empanelled in accordance with the statutes of the United States providing for the drawing and empanelling of grand juries, but was illegal, and this defendant says that such drawing tended to his injury and prejudice.

Wherefore he prays judgment of the said indictment and that the same may be quashed.

ENOCH W. AGNEW.

Sworn and subscribed to before me Dec. 17, 1895.

E. O. LOCKE,
Clerk.

Page 1 of the printed record shows that on the 16th day of November, 1895, Judge Locke ordered the Grand Jury for the December term of the Circuit Court of the United States, in and for the Southern District of Florida, to be held at Jacksonville, in the County of Duval, Florida, to be taken

from certain designated counties, of which Duval County was not one. This order was undoubtedly made by virtue of section 802, R. S., U. S. Sixteen not attending, the court ordered (see page 3 of printed record) to be drawn, according to law, from the names placed in the jury box, the names of ten qualified jurors from Duval County. Section 808, R. S., U. S., requires that the jury, when sixteen fail to attend, the additional jury shall be taken from the body of the district. We maintain that after an order designating the counties from which the Grand Jury should be taken has been made, that it is not within the meaning of the words "body of the district, and not from the bystanders," to order all subsequent venires that are issued to be filled from the box with names of residents of the county in which the court is being held, and in which the Grand Jury is empanelled. The body of the district must mean from counties that together form the district. In this district the judge had designated the counties from which the jurors should be taken, and if it is possible for the Court to designate one county as the one from which the jurors that complete the panel are to be taken, and to construe that as the body of the district, then the object of the law is defeated, and citizens are subject to investigation of supposed offences against them by jurors from the county in which the court is held, and an investigation by the citizens of their own section virtually denied them, should the Court continue to hold that the county in which the court is held is the body of the district. We maintain that the law is mandatory and the court was compelled to select from the body of the district as the law required. The demurrer admitted all the facts as charged in the plea of abatement, and the defendant swore that the drawing of the grand jurors tended to his injury and prejudice. The law was plain, the power of the government was at hand to enforce it, and the jurors to complete the panel should have been drawn from the body of the district and not from the County of Duval. The history of the laws concerning the drawing of jurors shows conclusively that Congress each time a new law was passed endeavored to so frame the law that the grand jurors should not be taken from one locality, but from localities more than one in order that the grand juries could be removed as far as possible from all local or political influence

The second assignment of error is that the Court erred in allowing the jurors to take notes of the case. L. H. Mattair, a juror, addressed the Court as King: "Can we take notes and jot down any items on paper?" To which question the Court replied: "Certainly; you have a right to assist your memory in any way that is consistent with your conscience." Subsequently, after some testimony had been offered, the Court said: "I will say, gentlemen of the jury, that in the matter of permitting jurymen to

take such notes as he saw fit, I do not desire or consent that these notes shall in any way control the minds of any other jurors at all; it is simply for his own personal convenience; and, gentlemen, I want you to understand that your memory and recollection of the testimony is to be the controlling element in enabling you to arrive at a just verdict in this case, and in permitting the juror to take such notes as he may see fit, I do not desire the jury to understand that these notes are at all in any way to influence you in the least; I thought I would call your attention to this fact."

The motion for new trial on page 28 of the printed record shows that four of the jury took notes and memoranda of the evidence.

At first blush this objection might seem trivial, but an accused person has the right to have the minds of all the jury, when they retire to consider as to their verdict, free and unaided by memoranda that the accused has not had the opportunity of seeing. There is no way of arriving at the manner of a jury's reaching their verdict. The court and the law throws around it all the secrecy that it can. A note taken, a memoranda made, a comment noted, may give a wrong impression or meaning to the testimony. If it is not error to allow these memoranda and notes to be taken, the prisoner has that to work against that he can not meet. A witness might say that the jurors' notes misrepresented him, and there is no way of arriving at or correcting it. That the judge saw fit to give the caution shows that he realized that it might work an injury. Page 49 of the printed record showed that defendant objected to the jury taking notes and to the judge's ruling. The court overruled his objection, and exception was taken. That was all that the defendant could do. What the notes or memoranda of the four jurors were that they carried with them will never be known.

Authorities in support, *Check vs. State*, 35 Ind., 492.

The third assignment of error is abandoned.

The fourth assignment erred in not allowing the witness, McIntyre, to state what was the commercial rating of Mr. Agnew. (See printed record page 130.) The witness, after testifying as to the guarantee of the bonds, given by Mr. Agnew, was asked the following questions:

Q. Was your position such as enabled you to know what was his financial standing at that time?

A. Yes; to know quite largely; not altogether.

Q. What was he worth in the spring of 1894, when that guarantee was put into the bank?

A. I couldn't say what he was worth.

Q. You don't know well enough to state what he was worth?

A. No, sir.

Q. You don't know what property he owned at that time?

A. I knew a good deal of property that he owned in a general way—a great deal.

Q. In a general way you knew that he owned a great deal of property?

A. Yes, sir.

Q. Do you know what his commercial rating was at that time?

The plaintiff objected to this question.

The Court sustained this objection; to which decision the defendant excepted.

Q. Then you are not able to state of your own knowledge any sum that he was worth in the spring of 1894?

A. I don't know exactly to any certain amount that I could testify to; I knew a good deal of property that he owned.

The object of the question was in the line of defence, showing that the guarantee of the bonds by Mr. Agnew gave them, or would give them, a rating and a value; namely, of not only their value as governed by the property which was bonded, but also the additional value created by Mr. Agnew's guarantee. The commercial rating of a man is the estimate placed upon his property and is considered his worth by the commercial world. If it was good or high at that time, we maintain the jury were entitled to it as evidence to show the intent of the accused at the time of the sale to the bank of the Globe Phosphate Mining Company's bonds; not to injure or defraud the bank.

The fifth assignment of error is not insisted upon.

The sixth and seventh assignments of error can be taken together in presenting the same to the court. They are as follows:

Sixth assignment of error. That the Court erred in refusing to allow the witness, W. B. Barnett, to testify as to whether Mr. Agnew's guarantee for $20,000 at the time he made it was good, and in striking out the testimony of the witness, W. B. Barnett.

Seventh assignment of error. That the Court erred in not allowing the witness, Stewart, to testify as to the rating of Dun's Commercial Agency of E. W. Agnew at the time he gave the guarantee for $20,000.

The defendant, further to maintain the issues on his part, then called as a witness W. B. Barnett, who, being duly sworn, testified as follows:

Direct examination by Mr. Gunby:

Q. Where do you reside?
A. In Jacksonville.
Q. What is your business?
A Banking.
Q. With what bank are you connected?
A. National Bank of Jacksonville.
Q What office in that bank do you hold?
A. President.
Q. How long have you been president of that bank?
A. Over 7 years.
Q. How long have you been connected with it?
A. We have only been a national bank a little over 7 years.
Q. What business were you in prior to 7 years ago?
A. Private bank.
Q. How long were you connected with that institution?
A. 11 years.
Q. In what capacity?
A. As president.
Q. Then you have been in the banking business in Jacksonville as president of a bank, first, a private institution and then a national bank—together how long?
A. Would be 18 years last March.
Q. Do you know the defendant, E. W. Agnew?
A. I do.
Q. How long have you known him?
A. At least 15 years.
Q. Do you know anything of his financial standing and condition in the spring of 1894—in the early part of 1894?
A. Nothing very definite; always considered him good for all of his contracts.
Q. Do you or not in your business keep up with the financial standing of men who occupy such a position as Mr. Agnew did at that time?
A. We try to.
Q. Are you sufficiently acquainted with Mr. Agnew's standing in the spring of 1894 to testify as to whether or not you considered his obligation, guarantee, or endorsement at that time good for $20,000?
Mr. Clark: Wait a minute.
A. Yes; I considered him good.

The plaintiff asks that the last answer be stricken out. The witness must state the source of his information.

By the Court: What he considered at that time his sources of information may go to the jury, and they may understand what they were worth. The question is not the sufficiency of Mr. Agnew at that time.

Mr. Gunby: The main question we want to prove by this class of testimony is that in the spring of 1894, when Mr. Agnew guaranteed these bonds—his personal guarantee—we want to prove by this witness and other presidents and cashiers of banks of this city, who are familiar with the standing of each other and their property, and whose business it was to inspect, that at that time his guarantee was perfectly good for $20,000.

By the Court: I do not consider this testimony relevant.

Mr. Gunby: I will state our objection:

The defendant offers testimony tending to prove by W. B. Barnett, president of the National Bank of Jacksonville, that he is a banker and president of that bank, and that he considered in the spring of 1894, that the defendant, E. W. Agnew, was in such a financial condition that his personal endorsement or guarantee was perfectly good for $20,000. The Court rules that the evidence is not admissible; to which decision the defendant excepted.

Mr. Foster: The defendant offers this testimony to prove or show the intention of the defendant that at the time that he placed those bonds in the First National Bank of Ocala he guaranteed the same by his personal guarantee.

By the Court: Any testimony that would show positively the financial condition of Mr. Agnew at that time, not in the commercial world—the opinion of what his guarantee would be taken for by others—is not a true test of what he knew himself. The opinion of others as to his standing at that time I do not think should be introduced to determine the value of that guarantee.

The defendant excepted to same.

Plaintiff moves to strike that portion of the witness's testimony stating that he considered him good.

The court sustained the motion; to which decision the defendant excepted.

The defendant, further to maintain the issues on his part, then called as a witness Mr. Stewart, who, being sworn, testified as follows:

Direct examination by Mr. Gunby:

Q. Where do you reside and what is your business?

A. Jacksonville; I have charge of R. G. Dun & Co.'s offices.

Q. You are the R. G. Dun & Co. agent?

A. Yes, sir.

Q. What is the business of R. G. Dun & Co.?

A. The mercantile agency—commercial agency.

Q. What do you do?

A. We undertake to report the condition of the business men of each State.

Q. You have a regular system of reporting business men as to their financial condition?

A. Yes, sir.

Q. Have you any record of the financial condition of E. W. Agnew in the early part of 1894?

A. Yes, sir; we have.

Mr. Gunby: If the court please, before asking this witness any further questions, I want to offer to show that Dun's Commercial Agency rated Mr. Agnew at that time at a certain amount of money.

By the Court: The question in this case is what was his intent, and he knew himself what that guarantee was worth, and that guarantee was worth just as much as he would be able to make it worth in a case of emergency. The question here is not how much Mr. Agnew was worth, but the question is how much he knew himself to be worth at that time and how good he knew his guarantee was. I consider in that case that if he had good grounds to believe that he was perfectly able to comply with that guarantee in every way, and according to his own financial condition at that time—had no doubt in his own mind—I will admit that such positive evidence as that might be relevant to go to the jury to show he had no intent to injure or defraud the bank, but what the opinions of the financial world were in regard to his condition is not the best evidence. This ruling will be had upon the testimony of Mr. Stewart in this case; to which decision the defendant excepted.

The eighth assignment of error is that the Court erred in not allowing the defendant, E. W. Agnew, in testifying in his own behalf, to answer the question, "From the information you got and the investigation you made, what was the value of the Globe Phosphate Company's lands at the time you purchased?" Mr. Agnew's testimony applicable to the question is found on page 142 of the printed record, and was as follows:

Q. You are charged here with having purchased for the bank $5,000 worth of the bonds of the Globe Phosphate Mining Company and putting the face value of them to your own credit in January, 1894. Will you state whether or not you, acting as president of the bank and for the bank, ever bought any of the bonds of the Globe Phosphate Company?

A. Not for the bank I did not. I bought it myself

Q. You bought it for yourself?

A. Yes, sir.

Q. It was a private purchase on your own account, was it?

A. Yes, sir.

Q. Do you know and were you acquainted with the value of the lands owned by the Globe Phosphate Mining Company?

A. Yes, sir, I talked with a great many parties. I never went and inspected it myself.

Q. You were not a judge of phosphate yourself, if you had inspected it?

A. No, sir; hadn't been out to any mine there.

Q. Did you make inquiries with reference to its value?

A. Yes, sir.

Q. Whom did you get your information through?

A. From several capable people; talked with a great many people about it.

Q. Can you recollect anybody who gave you an idea of its value?

A. Mr. Upson. I asked him about it when we bought some machinery.

Q. Do you know Mr. Bishop?

A. Yes, sir.

Q. Did you have a talk with him about it?

A. Yes, sir.

Q. From the information you got and the investigation you made, what was the value of the Globe Phosphate Company lands at the time you purchased?

The plaintiff objected to this question, for the reason that the witness has not shown that he is competent to give an opinion of such value.

The Court sustained the objection as not being the best evidence in regard to the value of the land; to which decision the defendant excepted.

The defendant's position in regard to the Globe Phosphate Company's bonds was that they were not worthless; that, though he purchased them at a low figure, they were worth their face value, but that when he sold them to the bank he made them perfectly good by his personal guarantee; that the purchase was reported to the proper officer of the Government, together with the fact that he had guaranteed them. The report was signed as required by law, by the directors, and their signatures and report was, on their part, a consent to the transaction, and they certainly must have had knowledge of the transaction. He (the defendant) was entitled to have his statement of what, after investigation, he considered the value of the lands covered by the bonds at the time he purchased the same. It was an important factor in arriving at the intention of the defendant, and the jury were entitled to it for what it was worth. The charge of the Court intimates that the accused sold to the bank bonds he knew to be worthless. The Court would not let him tell what he considered the value at the time he purchased, though he testified that he made investigation and inquiry. We maintain that it was grave error to prevent the defendant from answering the question

Tenth assignment of error. That the Court erred in giving the jury the following charges: "The testimony which tends to show that no notice of this purchase was given to the Board of Directors or their consent asked may be considered in this connection. This testimony, which tends to show that the defendant had, under the circumstances, testified to show invested one-half of the capital of the bank in that class of securities without the consent or knowledge of the Board of Directors, may be taken into consideration in determining at that time what the intent of the defendant was.

"The rule of law in regard to intent is that intent to defraud is to be inferred from wilfully and knowingly doing that which is illegal and which, in its necessary consequences and results, must injure another. The intent may be presumed from the doing of the wrongful or fraudulent or illegal act, and in this case, if you find that the defendant placed that which was worthless or of little value among the assets of the bank at a greatly exaggerated value, and had that exaggerated value placed to his own personal account upon the books of the bank, from such finding of fact you must necessarily find that the intent with which he did that act, was to injure or defraud the bank, but this inference or presumption is not necessarily conclusive. There may be other evidence which may satisfy the jury that there was no such intent, but such an inference or presumption throws the burden of proof upon the defendant, and the evidence upon him in rebuttal to do away with that presumption of guilty intent must be sufficiently strong to

satisfy you beyond a reasonable doubt that there was no such guilty intent in such a transaction.

"The misapplication and misappropriation of the credits of a bank may show a party to be guilty as well as the misapplication and misappropriation of funds or moneys itself. It is not necessary that a misapplication be made in money or cash, but if the credit of a bank, if the accounts are wilfully and fraudulently changed upon the books of a bank so that a credit is placed to a certain personal account and charged to the bank, that is a wilful misapplication of the credits of the bank, although it may not be in money.

"If you find that the defendant was president of the First National Bank of Ocala, and as such president did, at or about the time charged in the indictment, place among the assets of such bank the several bonds, as shown in the testimony, at their full face value, when their value was very much less, and had such amount placed to his own personal credit and charged the same to the bank, and thereby obtained a credit from the bank of that amount upon such insufficient consideration, the natural, necessary, and legal inference is that such transaction was done to obtain such credit and such moneys or property as such credit brought without a good or valuable consideration and with intent to injure and defraud said bank, and such inference can only be overcome by testimony satisfactory to you that there was no such intent.

"As I say again, gentlemen, the only difficult question for you to determine is the intent of the accused. The question of the intent is to be determined by the facts and circumstances and the surroundings at the time of the transaction; but, gentlemen, the law presumes that any party who in any way attempts anything, by any gurnantee or anything of that kind which is dependent upon future successful operations, takes the risk of the success, and that if a person commits an offense with the intent of temporarily injuring or defrauding another party or a banking institution, although it may be his intent at the time to finally recompense or prevent any injury resulting from such act, he is not protected by such intent to finally correct the temporary wrong deed; or, in this case, if you are satisfied that at the time he placed those bonds there he knew that they were worthless or of a very small value and had a large value charged to the bank and placed to his account, if he did that with the intent for the time being to injure the bank and take a wrongful advantage of the credit of the bank, no matter if at that time he had an intent to in the future remedy any injury that might come to the bank, it would not protect him in your finding or from your finding what the intent was at that time.

"The intent of the defendant at the time he committed the transaction is the question for you to determine, and in arriving at a conclusion of that

intent you will carefully weigh all of the testimony in the case. If you find, as I have charged you, that he had a guilty intent at that time upon the facts charged in any of the counts, it is not necessary to find that he was guilty upon all the counts. A finding upon any one count will justify a general finding of guilty."

The error in the tenth assignment we claim to be that after stating the rule of law in regard to intent and saying that "the intent may be presumed from the doing of the wrongful or fraudulent or illegal act, and in this case if you find that the defendant placed that which was worthless or of little value among the assets of the bank at a greatly exaggerated value, and had that exaggerated value placed to his own personal account upon the books of the bank, from such finding of fact you must necessarily infer that the intent with which he did it, that act was to injure or defraud the bank, but this inference or presumption is not necessarily conclusive. There may be other evidence which may satisfy the jury that there was no such intent, but such an inference or presumption throws the burden of proof upon the defendant, and the evidence upon him in rebuttal to do away with the presumption of guilty intent must be sufficiently strong to satisfy you beyond a reasonable doubt that there was no guilty intent in such transaction."

We maintain that the presumption of innocence remains with the accused, and that the jury cannot require the accused to overcome, beyond a reasonable doubt, an inference which the Court itself, in its charge, says is not necessarily conclusive. The Government must prove beyond a reasonable doubt the guilty intent, and the requirement that the defendant must overcome the presumption of guilty intent beyond a reasonable doubt is not and was not a correct charge to the jury.

In *Coffin vs. U. S.*, 15 Sup. Rep., 395, the Court laid down the law, "That a charge that the burden of proof had shifted under the circumstances of the case, and that it was incumbent on the accused to show the lawfulness of their acts, is erroneous, especially where the Court refuses to charge as to the presumption of innocence."

The twelfth, sixteenth and seventeenth assignments of error can be presented together.

The Court, in its charge on the crime of false entries, was as follows: (Page printed record 27.) "The crime of making false entries by an officer of a national bank, with the intent to defraud, defined in the Revised Stat-

utes of the United States, Section 5209, includes any entry on the books of the bank which is intentionally made to represent what is not true and does not exist, with the intent either to deceive its officers or to defraud the association. The crime may be committed personally or by direction. Therefore, the entry of a slip upon the books of the bank, if the matter contained in that deposit slip is not true, it is false, if the statement made upon the deposit slip is false, the entry of it in the bank and the book of the bank is false." We maintain that if an entry on the books of the bank had differed from the deposit slip it would not have been a correct entry. We hold that all the evidence tends to show that every dollar of that deposit went to the payment of the bank's indebtedness, and no intent was shown of an intention to defraud the bank.

The defendant asked the Court to charge that the making of a false entry is a concrete offence, which is not committed where the transaction entered actually took place, and is entered exactly as it occurred; and further, that the truthful entry of a transaction charged as fraudulent does not constitute a false entry within the meaning of the statute. These requests of the defendant were refused, and we maintain was manifest error. Mr. Agnew was charged with appropriating the funds arising from the sale of certain Marion Phosphate bonds, and was in one count charged with embezzling the funds arising from the same, and the Government, to prove its case, starts with the deposit slip and follows every entry through all the books, the entries showing the transaction exactly as it occurred. It seems to us that the defendant was entitled to the charges refused. We rely on *Coffin vs. U. S.*, 15 Supreme Court Reports, page 394.

The eleventh and fifteenth assignments of error can be presented together. The eleventh was that the Court erred in giving, at the request of the United States attorney, the following instruction: "The defendant is presumed to be innocent of all the charges against him until he is proven guilty by the evidence submitted to you, which presumption remains with the defendant to such a time in the progress of the case as that you are satisfied of his guilt beyond a reasonable doubt." On the question of presumption of innocence the defendant asks that the following instruction be given, which was refused: "Every man is presumed to be innocent until he is proven guilty, and this legal presumption of innocence is to be regarded by the jury in this case as matter of evidence, to the benefit of which the party is entitled. This presumption is to be treated by you as evidence giving rise to resulting proof to the full extent of its legal efficacy."

The judge, in giving the instruction asked for by the United States attorney, limits the force of the presumption of innocence. It has been said that the presumption of innocence begins with case, remains with the accused during the whole trial, goes with the jury into the jury-room, and there remains until overcome by evidence beyond a reasonable doubt The Court, in his charge, tells the jury that it remains until in the progress of the case it is overcome by evidence beyond a reasonable doubt. He should have told the jury that they should, in the investigation in the jury-room, have in view the presumption of innocence, and that it must be overcome by evidence. The force of the presumption of innocence was not properly presented to the jury. The instruction asked for by the defendant concerning the presumption of innocence was refused. We maintain that there was error in giving the charge asked for by the Government and in refusing the one asked for by the defendant. We rely on the authority of *Coffin vs. U. S.*, 15 Sup. Ct., 394, and *Cochran vs. United States*, 15 Sup. Rep., 628.

The thirteenth assignment of error, which is as follows:

Thirteenth. That the Court erred in giving the following instruction, asked for by the U. S. attorney: "The law presumes that every man intends the legitimate consequence of his own acts. Wrongful acts, knowingly or intentionally committed, can neither be justified or excused on the ground of innocent intent. The color of the act determines the complexion of the intent. The intent to injure or defraud is presumed when the unlawful act which results in loss or injury is proved to have been knowingly committed. It is a well-settled rule, which the law applies in both criminal and civil cases, that the intent is presumed and inferred from the result of the actions. If, therefore, the funds, moneys or credits of the First National Bank of Ocala are shown to have been either embezzled or willfully misapplied by the accused and converted to his own use, whereby, as a necessary, natural or legitimate consequence, the association's capital was reduced or placed beyond the control of the directors or its ability to meet its engagements or obligations, or to continue its business, was lessened or destroyed, the intent to injure or defraud the bank may be presumed."

The instruction should not have been given, for there was no evidence that the capital of the bank was reduced or placed beyond the control of the directors or its ability to meet its engagements or obligations or to continue its business was lessened or destroyed.

The fourteenth error assigned is abandoned.

The eighteenth error assigned is that the Court erred in refusing to instruct the jury at the defendant's request as follows:

Eighteenth. "If the jury shall find from the evidence that on the 15th day of April, A. D. 1895, E. W. Agnew, upon receipt of the check of the Merchants' National Bank of Savannah for $3,400, used that check and the proceeds of it for the payment of a debt of the First National Bank of Ocala, then they must find upon that count in the indictment that he did not fraudulently embezzle or misapply the check or the proceeds of it."

The evidence shows that Mr. Agnew, a few days before his bank failed, caused to be entered on a deposit slip a check for $3,400 that was drawn in favor of the bank to his credit; he took the proceeds and immediately paid a debt of the bank. We claim that there was no intention to defraud the bank and none can be inferred. The conversation the defendant had with the receiver concerning the check and sale of bonds (see page 67 of printed record), was after the failure of the bank and made under excitement. The credit was made by Williams, and the whole transaction was open and known to all in the bank who have testified, and we claim that the guilty intent does not attach to this transaction. The check was itself used to pay the bank debt.

The nineteenth error is that the Court should have given the instruction as follows, asked for by the defendant and refused:

Nineteenth That the Court erred in not giving the following instruction, also asked for by the defendant: "That the written guarantee introduced and filed in evidence, signed by E W. Agnew, and conditioned for the payment of the interest and principal of the bonds of the Globe Phosphate Mining Company was upon its face a good, legal and sufficient guarantee, and that if the jury shall find from the evidence that at the time of the delivery by E. W. Agnew to the cashier of the First National Bank of Ocala of the bonds of the Globe Phosphate Mining Company, in controversy, he also delivered the guarantee which has been introduced in evidence, and they shall further find from the evidence that at the time said guarantee was signed and delivered that E. W. Agnew, the defendant, was solvent and thoroughly able to respond to the obligation, and that he signed and delivered the guarantee with the knowledge of his solvency and with intent to pay the same when demand was made upon him for payment, then the jury may find from the evidence that the defendant did not invest or misapply the money arising from the sale of the said bonds with intent to defraud the association or any one else."

The Court had charged as to the guarantee as affecting intent. We claim that the evidence sustained our charge asked for, and should have been given.

We maintain that if the plea in abatement was a good one, and the Court erred in sustaining the demurrer, then he should have arrested judgment.

Mr. Agnew is charged in some of the counts with embezzlement. We claim that on those counts the verdict should have been not guilty. On the count alleging false entries, we claim the verdict should have been not guilty; that there is no evidence of any intention on the part of Mr. Agnew to cause false entries to be made (if they were made) for the purpose of defrauding, deceiving or misleading any one.

The counts that refer to the purchase of the bonds of the Globe Phosphate Mining Company are not sustained by the evidence, the fraudulent intent being wanting, and the verdict should have been not guilty, and the ruling of the Court shut out evidence that tended to show the intent of the defendant at the various times of the purchasing of the bonds.

The errors assigned and noticed in the brief, we think, are sufficient to warrant a reversal.

ELEAZER K. FOSTER,
Att'y for the Plaintiff in Error.

The eighteenth error assigned is that the Court erred in refusing to instruct the jury at the defendant's request as follows:

Eighteenth. "If the jury shall find from the evidence that on the 15th day of April, A. D. 1895, E. W. Agnew, upon receipt of the check of the Merchants' National Bank of Savannah for $3,400, used that check and the proceeds of it for the payment of a debt of the First National Bank of Ocala, then they must find upon that count in the indictment that he did not fraudulently embezzle or misapply the check or the proceeds of it."

The evidence shows that Mr. Agnew, a few days before his bank failed, caused to be entered on a deposit slip a check for $3,400 that was drawn in favor of the bank to his credit; he took the proceeds and immediately paid a debt of the bank. We claim that there was no intention to defraud the bank and none can be inferred. The conversation the defendant had with the receiver concerning the check and sale of bonds (see page 67 of printed record) was after the failure of the bank and made under excitement. The credit was made by Williams, and the whole transaction was open and known to all in the bank who have testified, and we claim that the guilty intent does not attach to this transaction. The check was itself used to pay the bank debt.

The nineteenth error is that the Court should have given the instruction as follows, asked for by the defendant and refused:

Nineteenth That the Court erred in not giving the following instruction, also asked for by the defendant: "That the written guarantee introduced and filed in evidence, signed by E W. Agnew, and conditioned for the payment of the interest and principal of the bonds of the Globe Phosphate Mining Company was upon its face a good, legal and sufficient guarantee, and that if the jury shall find from the evidence that at the time of the delivery by E. W. Agnew to the cashier of the First National Bank of Ocala of the bonds of the Globe Phosphate Mining Company, in controversy, he also delivered the guarantee which has been introduced in evidence, and they shall further find from the evidence that at the time said guarantee was signed and delivered that E. W. Agnew, the defendant, was solvent and thoroughly able to respond to the obligation, and that he signed and delivered the guarantee with the knowledge of his solvency and with intent to pay the same when demand was made upon him for payment, then the jury may find from the evidence that the defendant did not invest or misapply the money arising from the sale of the said bonds with intent to defraud the association or any one else."

The Court had charged as to the guarantee as affecting intent. We claim that the evidence sustained our charge asked for, and should have been given.

We maintain that if the plea in abatement was a good one, and the Court erred in sustaining the demurrer, then he should have arrested judgment.

Mr. Agnew is charged in some of the counts with embezzlement. We claim that on those counts the verdict should have been not guilty. On the count alleging false entries, we claim the verdict should have been not guilty; that there is no evidence of any intention on the part of Mr. Agnew to cause false entries to be made (if they were made) for the purpose of defrauding, deceiving or misleading any one,

The counts that refer to the purchase of the bonds of the Globe Phosphate Mining Company are not sustained by the evidence, the fraudulent intent being wanting, and the verdict should have been not guilty, and the ruling of the Court shut out evidence that tended to show the intent of the defendant at the various times of the purchasing of the bonds.

The errors assigned and noticed in the brief, we think, are sufficient to warrant a reversal.

ELEAZER K. FOSTER,
Att'y for the Plaintiff in Error.

165-36

Office Supreme Court, U. S.
FILED.
OCT 16 1896
JAMES H. McKENNEY,
CLERK.

165-36

Supreme Court of the United States.

OCTOBER TERM, 1896.

ENOCH W. AGNEW, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 447.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF FOR THE UNITED STATES.

Supreme Court of the United States.

OCTOBER TERM, 1896.

ENOCH W. AGNEW, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 447.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF FOR THE UNITED STATES.

On December 12, 1895, the defendant was indicted in the circuit court of the United States for the southern district of Florida for violation of section 5209, Revised Statutes, for the misapplication of the funds, moneys, and credits of the First National Bank of Ocala, in the State of Florida, of which he was the president. The indictment contained eight counts, which were fully explained to the jury in the charge given to them by the judge. (Rec., pp. 21, 22.)

On December 17, 1895, the defendant filed in open court a plea to the indictment, which is described as a

plea in abatement (Rec., pp. 15, 16), to which plea the United States, by the district attorney, filed a demurrer, on which issue was joined, and on argument the demurrer was sustained by the court; and thereupon the defendant entered the plea of not guilty, and the cause was set for trial for January 3, 1896, on which day a jury was impaneled and the trial proceeded with, and a verdict of guilty was returned by the jury on January 7.

Motions for a new trial and in arrest of judgment were submitted on behalf of the plaintiff in error, and were denied by the court; and the case is now here on writ of error.

ASSIGNMENTS OF ERROR.

Nineteen distinct grounds are assigned as error in the rulings of the court in the course of trial. These will be considered in the order in which they are presented in the record (pp. 33–37).

I.

That the court erred in sustaining the demurrer to the defendant's plea in abatement.

The facts set out in this plea (p. 16) as grounds for the abatement of the indictment are that, after the regular venire had been exhausted without obtaining sixteen grand jurors, the court ordered a special venire to issue for ten grand jurors to be drawn according to law—

> to be taken from the county of Duval; that the clerk and marshal in drawing said venire, whenever a name was legally drawn from the box, if said

> party so drawn was not from the county of Duval, laid aside said name and continued drawing until ten names from the county of Duval were obtained.

That of these ten, four were drawn to complete the grand jury.

The point of objection appears to be that the additional names drawn to complete the grand jury were limited to the county of Duval.

The practice in the matter of pleas in abatement appears to be governed by local statutes and practice. The only provision in the Federal statute on the subject of completing the grand jury will be found in section 808, Revised Statutes:

> * * * If of the persons summoned less than sixteen attend they shall be placed on the grand jury, and the court shall order the marshal to summon, either immediately or for a day fixed, from the body of the district and not from the bystanders, a sufficient number of persons to complete the grand jury.

This is exactly what was done in this case.

The matters of fact set up in the plea do really form no part of the record of the case. The proceedings of drawing, impaneling, and constituting the grand jury are no part of the record, unless made such by the bill of exceptions; and the bill of exceptions (p. 46 *et seq.*) show that that was not done here. But treating such proceedings as they appear printed in this pamphlet—as part of the record—it is evident that the grand jury was designed by the judge to be constituted of persons drawn from the body of the district; and to that end a certain

number was taken from each of the counties of the district. On page 1 is the original venire facias, from which it appears that from ten counties persons, from one to four in number, were summoned from each county, aggregating twenty-three. The county of Duval was not of these ten counties. Hence it was that when a deficiency appeared from the failure of those summoned to attend, the judge ordered—

> That the clerk proceed to draw, according to law, from the names placed in the jury box, the names of ten qualified jurors from Duval County, to complete the panel of grand jurors, and issue a venire to summon the same, etc. (Rec., p. 3.)

The original venire issued on 18th of November, 1895. The second venire issued December 2, 1895. The court opened December 3, 1895, and the indictment was returned December 12, 1895 (p. 8). Yet not until December 17 did the defendant file his plea in abatement.

The plea prays that the indictment be quashed. Why an exception was not taken to the manner of drawing the grand jury or why the objection was not made by a motion to quash the indictment does not appear. No want of knowledge on the part of the defendant or want of opportunity to present his objection earlier is stated or suggested in the plea.

In *McClary* v. *The State* (75 Ind., 263), the court, in sustaining a demurrer to a plea in abatement, said:

> Moore, in his treatise on Criminal Law, sec. 140, says: "Pleas in abatement are not favored in law; nor are presumptions of fact indulged in their favor.

> But they must state every fact necessary to their sufficiency; and a plea in abatement that fails to show why the objection to the grand jury was not or could not have been made by way of challenge is bad, and a demurrer to it will be sustained."

Irregularities in drawing and constituting the grand jury, which do not apparently prejudice the defendant, afford him no ground of complaint.

> Wharton's Crim. Plead. and Pr., 9th ed., sec. 350.
> *United States* v. *Reed*, 2 Bltch., 456.
> *United States* v. *Tallman*, 10 Bltch., 21.
> *United States* v. *Richardson* (Op. Mr. Justice Gray), 28 F. R., 65.

In *United States* v. *Terry* (39 F. R., 356), Judge Hoffman, referring to the plea in abatement filed to the indictment there, said:

> The demurrer, therefore, in this case, can only be allowed to operate as an objection or exception to the filing or allowance of the plea. It can not be taken as an admission of the truth of the allegations pleaded. No such admission was intended by the district attorney, nor had he authority to make it.

We think it clear that the judgment of the court below on this demurrer can not be successfully impeached on any ground.

II.

That L. H. Mattair, one of the jurymen in said cause, arose and asked the court if he could take notes and jot down any items on paper. To which the court replied, "Certainly; you have the right to assist your memory in any way that is consistent with your conscience." And subsequently, after

some testimony had been offered, the court addressed to the jury a full and explicit caution on the subject (pp. 33, 34.)

To this assignment it might be sufficient to say that although the juror asked permission to take notes and the court granted it, yet it nowhere appears in this record that the juror availed himself of the permission so obtained—that he took a single note of the testimony, or, if he did take notes, that he used them at any time during his service.

In Thompson and Merriam on Juries, sec. 390, it is stated, that in some States jurors are permitted by statutes to take notes of the testimony and take them to their room. And the writers add, "In the absence of such a statute it has been held that for a juror to do this is such misconduct as will avoid verdict;" and *Cheek* v. *State* (35 Ind., 495) is cited as sustaining this proposition.

A very unsound and, indeed, absurd reason is quoted from that case for the ruling.

In section 402 the statutes of several States are cited and commented upon.

What reasonable ground can be suggested why a conscientious and intelligent juror should not be permitted to aid his memory by taking notes of the testimony on which his verdict must rest, it is difficult to conceive. A criminal case, or a will case (such as the Holt will case, which has occupied nearly five weeks in the testimony alone), would require not merely a degree of attention, but a retentiveness of memory which but few mortals are capable of, to enable a juror to carry in his unassisted memory even the material and essential facts by which his verdict should be formed and controlled.

The judge in this case wisely and prudently admonished the jury that such notes were for the convenience only of the juror taking them and were not to be used or referred to by any other. He said:

> I want you to understand that your memory and recollection of the testimony is to be the controlling element in enabling you to arrive at a just verdict in this case; and in permitting the juror to take such notes as he may see fit, I do not desire the jury to understand that these notes are at all in any way to influence you in the least.

In *Cowles, admr.*, v. *Hayes et al.* (71 N. C., 230), Bynum, J., said:

> The court allowed the jury to copy a memorandum of articles sold and the prices thereof, made out by the plaintiff's counsel. This was objected to by defendants. But the case states that this memorandum was but the copy of the account proved and admitted in evidence. It was, therefore, nothing more than a note of the evidence taken down by a juror, which was not only proper, but often commendable.

III.

That the court erred in admitting the cashbook and the entries thereon, as offered by the United States in the testimony of one Massey, a witness introduced by the United States, and in refusing to strike out the testimony of the said witness in reference to said cashbooks and the entries thereon made by him, etc.

The testimony of Massey will be found on pages 56 to 60, and it shows that no ground whatever exists for this exception.

The witness was shown a book, which he identified as "Individual ledger No. 18," a ledger that has all of the accounts of the depositors. He was asked to turn to the account of E. W. Agnew, the defendant. At this stage the defendant for the first time objects, on the ground that there was no evidence that the witness kept the book, or that he was familiar with the keeping of it, or that it was an original book of entry (p. 57). After some colloquy between the court, the witness, and counsel, the court said:

> I think I will permit the party to testify as to that book and let it go in evidence.

But before the "party" testified the court and counsel examined him further, the result of which was that the court finally ruled (p. 58):

> I think if there is better evidence on that point we had better take time to get it. I will not permit the witness to testify to entries that are not made by himself.
>
> *Exception withdrawn on this understanding.*

So that it appears not only that the witness did not testify at all on the subject, but that the defendant withdrew his exception on which his present assignment rests.

The counsel who prepared the assignment of errors may have confounded the testimony of C. J. Huber (pp. 60 to 66) with that of C. B. Massey (pp. 56 to 60). Massey testifies as to the contents of the individual ledger, containing the accounts of depositors, while Huber does testify fully of the cashbook of the bank; and there does appear on page 66 a motion of counsel for defendant to strike out all of Huber's testimony on that subject, which

motion was overruled by the court and an exception taken to the ruling; but no assignment of error appears to have been based thereon, and no notice, consequently, can be taken thereof by this court on review.

IV.

That the court erred in refusing to allow the witness McIntyre to answer the question put to him by defendant's counsel: "Do you know what his commercial rating was at that time?"

The testimony of this witness will be found on page 130. He had been cashier of the First National Bank of Ocala at the time of the alleged criminal misapplication of its funds by the plaintiff in error, on whose behalf he was called to testify. He had testified fully from his personal knowledge as to the "financial condition" and "financial standing" of the plaintiff in error, when he was asked this question as to the "commercial rating" of the plaintiff in error, to which counsel for the Government excepted and his exception was sustained, but the grounds therefor are not stated. They may, however, be readily conjectured.

The "commercial rating" of a trader is not his actual financial condition or his estimated financial condition by those whose personal relations with him afforded opportunity for forming an estimate, but it is his commercial worth as fixed by the public or semiofficial agents of the advertising agencies of the country, such as the Dun Commercial Agency or Bradstreet Commercial Agency. And obviously, if such testimony was properly admissible under any circumstances, the best evidence would

be by the production either of the official publications of the agency or the testimony of the agents themselves. But we think that, in whatever form offered to support the issue joined in this case, it was properly rejected as the merest matter of *hearsay*.

V.

That the court erred in allowing the witness McIntyre to be asked "why he resigned as cashier of the bank in June, 1894," and permitting him to answer the question.

McIntyre was, as we have seen, a witness called on behalf of the defendant. He had testified in chief, and the question objected to was put to him on cross-examination. The reason which induced the court to allow the question to be put and answered and the witness' explanation of his action will be found on pages 131 and 132.

The criminal acts charged in the indictment were alleged to have been committed in January, February, and May, 1894. The witness was cashier of the bank during that period. His resignation as cashier of the bank was not accepted until June, 1894. He stated, however, on cross-examination, that his resignation was tendered in January, 1894. The objection urged to the question was that it was "immaterial." The court properly said:

> That might be relevant and might not. If he resigned because he knew that Mr. Agnew's guarantee was not good for anything, that might be relevant.

The witness, after a good deal of pressure, finally said:

> I would state that of course it is very apparent I was not altogether satisfied with the business. That is my reason for getting out of it. I couldn't state any particular.

Here was a witness who was an officer in the bank of which defendant was president. He was next in rank to the president. He was charged with the custody of all the assets of the bank. He tendered his resignation as cashier in January, 1894. The evidence shows that the criminal conduct of the president began and was continued through a period long prior to that date. The witness was introduced by the defendant to testify in his behalf. He was vouched for by the defendant who called him. The witness' personal conduct was as relevant to the issue here as were the matters as to which he was called to testify.

If during the period referred to he had declared to some one his knowledge of the criminal conduct of the defendant such declaration would have been the proper subject to be brought out on cross-examination in order that the jury might ascertain the weight to be given to his present testimony. His conduct during that period was for the same reason a proper subject for cross-examination. It was as eloquent and as significant as any declaration he could have made. He voluntarily resigned his office of cashier. Why did he do it? If for reasons in no wise connected with the conduct of the president their disclosure here would not be injurious to the defendant, and of them he would have no ground

for complaint. But if it appeared that he resigned because he was "not satisfied with the business" it was proper that the jury should have before them in evidence the fact of his resignation and the reasons which induced it, that in the light of these they might properly weigh the evidence which he here delivered in chief.

A witness may in any case be called upon to explain his own conduct during the transactions of which he is testifying and of which it really formed part of the *res gestæ*.

VI.

In refusing to allow the witness Barnett to testify as to whether Agnew's guaranty for $20,000, at the time he made it, was good; and in striking out the testimony of the witness.

The testimony appears on page 135.

Barnett was president of the National Bank of Jacksonville, Fla. He was called as a witness on behalf of the defendant. The question put to him was—

> Are you sufficiently acquainted with Mr. Agnew's standing in the spring of 1894 to testify as to whether or not you considered his obligation, guaranty, or indorsement at that time good for $20,000?
>
> Mr. CLARK (district attorney). Wait a minute.
>
> A. Yes; I considered him good.

The witness did not wait to have the objection raised by the district attorney passed upon by the court, nor did he answer the question that was put to him. He was asked if he was sufficiently acquainted with Agnew's

standing to enable him to speak. Instead of answering that question he *spoke*. The court said:

> What he considered at that time his sources of information may go to the jury, and they may understand what they were worth. The question is not the sufficiency of Mr. Agnew at that time.

Counsel for defendant then stated his object in putting the question. Counsel for the Government stated his objections to it. The court said:

> Any testimony that would show positively the financial condition of Mr. Agnew at that time, not in the commercial world—the opinion of what his guaranty would be taken for by others—is not a true test *of what he knew himself*. The opinion of others as to his standing at that time I do not think should be introduced to determine the value of that guaranty.

Then the swift and premature expression of opinion by the witness was stricken out by the court.

The conduct of the examination of witnesses in court is within the discretion of the court and is not reviewable here, except it appear that manifest injury has been done to the party complaining. Here the only wrong that was done was that done by the witness in his hasty and unconsidered answer. The court was clearly right in the view it took as to the irrelevancy of the opinion of others as to the financial condition of the defendant. The question here was as to the *intent* of the defendant; and only his actual financial condition, as known to himself, was relevant to that inquiry.

VII.

In not allowing the witness Stuart to testify as to the rating of Dun's Commercial Agency of E. W. Agnew at the time he gave the guaranty for $20,000.

The testimony of this witness will be found on page 136. He was the agent of R. G. Dun & Co., and had charge of their commercial agency at Jacksonville, Fla. The ground on which the question was ruled out is stated fully by the court:

> The question in this case is, What was his intent? And he knew himself what that guaranty was worth; and that guaranty was worth just as much as he would be able to make it worth in a case of emergency. The question here is not how much Mr. Agnew was worth, but the question is how much he knew himself to be worth at that time, and how good he knew his guaranty was * * *. I will admit that such positive evidence as that might be relevant to go to the jury to show he had no intent to injure or defraud the bank; but what the opinions of the financial world were in regard to his condition is not the best evidence, etc.

VIII.

In not allowing the defendant, Agnew, to answer the question, "From the information you got and the investigation you made, what was the value of the Globe Phosphate Company lands at the time you purchased?"

The testimony will be found on pages 142 and 143.

The sixth and eighth counts of the indictment charge that the defendant purchased with the funds of the bank, from John A. Bishop, bonds of the Globe Phos-

phate Company of the par value of $10,000, which he placed among the assets of his bank, crediting himself with $10,000, when in fact he had paid for said bonds only the sum of $2,500.

To the question propounded to the witness by his counsel, the district attorney objected on the ground that the witness had not shown that he was competent to testify from his own knowledge as to the value of the lands, but spoke only from information derived from other persons who did know of their value. That the testimony of such other persons—if any such there were—was the best evidence of the value of the land, and the court sustained the objection on the ground that the testimony of the witness was not the best evidence, and this was manifestly true from the testimony previously delivered by this witness. He had stated (p. 142), "I talked with a great many parties. I never went out and inspected it myself." He admitted that he was not a judge of phosphate land, if he had inspected it. He gave the names of persons whom he had consulted as to its value, Mr. Upson and Mr. Bishop, and they had been called and examined as witnesses in this case. The witness' opinion as to the value of the land was then, at best, but a second-hand article of very inferior quality.

IX.

In allowing the United States attorney to ask the defendant, Agnew, when he was testifying in his own behalf, the following question and requiring him to answer the same: "Isn't it true that the firm of E. W. Agnew & Co. has been swept out of existence and could not pay its liabilities?"

The question and answer will be found at the top of page 146.

The witness was the defendant testifying in his own behalf. He had enlarged upon the wealth, financial strength, and solvency of his firm of E. W. Agnew & Co. He was the owner of orange groves, of storehouses, and dwelling houses, of thousands of acres of land, much of it under cultivation. He was a member of the firm of E. W. Agnew & Co., whose "business was worth $400,000." The firm was worth $450,000, with liabilities of "about $125,000" (p. 145).

Upon this showing it would seem to have been but a reasonable inquiry to make on cross-examination as to what had become of this castle in the air—or in Spain. Why should the defendant, an unhappy though innocent victim of untoward circumstances—why should he object to disclosing the fact that his castle had been undermined and that the top of it had fallen? That he had lost his goodly estate did not necessarily import that his good name had fallen with it. Moth and rust may have corrupted the one, but if his attitude in his case was sustained by good conscience, he had the calm and strong assurance that his good name was beyond the touch of corruption.

The court overruled the objection; and the defendant responded with laconic simplicity, "They failed."

Surely the jury had a right to know how far the testimony of this deeply interested witness was in accordance with the facts of history. Up to this time the witness

had testified only of his financial *rise*,-and had his testimony been permitted to end at that, the jury must have remained in the belief that the defendant was yet in possession of his great wealth. In order to the truth, therefore, it was needful that they be informed of its *fall*. It was the right of the Government, too, to subject this witness to the usual and ordinary tests that were applied to determine the weight to be attached to the veracity, accuracy, and fidelity of the witness.

The remaining assignments of error are to certain portions of the charge given by the court to the jury, and several to the refusal of the court to grant certain instructions asked for by the defendant, and to granting certain instructions asked for by the district attorney.

X.

The portion of the charge objected to here is quoted on pages 34–36, and relates generally to the question of the *intent* of the defendant.

The court said that the fact that the defendant had invested one-half of the capital of the bank in a certain class of securities, without the knowledge or consent of the board of directors of the bank, might be considered by the jury in determining the question of intent. He said:

> The rule of law in regard to intent is, that intent to defraud is to be inferred from willfully or knowingly doing that which is illegal, and which, in its necessary consequences and results, must injure another, etc.

That the fact that the defendant placed a security of little or no value among the assets of the bank, at a greatly exaggerated value, and had himself credited on the books of the bank with such exaggerated value, was a fact from which the jury—

> must necessarily infer that the intent with which he did that act was to injure or defraud the bank. But this inference or presumption is not necessarily conclusive.

It throws upon the defendant the burden of proof of removing that presumption of a guilty intent.

Again, the court said:

> The question of the intent is to be determined by the facts and circumstances and the surroundings at the time of the transaction, * * * The law presumes that every party who in any way attempts anything, by any guaranty or anything of that kind, which is dependent upon future successful operations, takes the risk of the success; and that if a person commits an offense, with the intent of temporarily injuring or defrauding another party, or a banking institution, although it may be his intent at the time to finally recompense or prevent any injury resulting from such act, he is not protected by such intent to finally correct the temporary wrong deed, etc.

A bank president, or a bank clerk, or a store clerk, may not take money from the till to bet on a horse race, although he do it with the virtuous and honest intent to restore the amount so taken from his winnings on the race. If the contrary rule be allowed, then would the actor be innocent if his horse won, but heinously derelict

if through error of judgment he had bet on the wrong horse.

Orange groves are an excellent aud commendable object in Floridian agriculture; but the bank president may not, with impunity, take the funds of the bank and invest them in orange groves on his personal account, lest a nipping frost do come and take away his grove and blight his good name.

> The intent of the defendant at the time he committed the transaction is the question for you to determine, and in arriving at the conclusion of that intent you will carefully weigh all the testimony in the case.

See, too, *Coffin* v. *United States* (162 U. S., 675).

XII.

The defendant is presumed to be innocent of all the charges against him until he is proven guilty by the evidence submitted to you. This presumption remains with the defendant to such time in the progress of the case as that you are satisfied of his guilt beyond reasonable doubt.

While plaintiff in error has excepted to this instruction given by the court, it will be seen that in the fifteenth assignment of error, hereafter to be noticed, he has also excepted to the refusal of the court to grant him instructions to substantially the same effect, asked for by himself. One apparent objection to the instruction asked for by him and refused by the court is the obscure and unintelligible language of its closing sentence.

But the court is not bound to adopt the language which counsel employ in framing their instructions, nor is it bound to repeat instructions already given in different language.

Ayers v. *Watson*, 137 U. S., 584.
Marchand v. *Griffon*, 140 U. S., 516.
Grand Trunk R. R. Co. v. *Ives*, 144 U. S., 408.

XII.

*The crime of making false entries by an officer of a national bank, with the intent to defraud, * * * includes any entry on the books of the bank which is intentionally made to represent what is not true or does not exist, with the intent either to deceive its officers or defraud the association. The crime may be committed personally or by direction. Therefore the entry of a slip upon the books of the bank, if the matter contained in that deposit slip is not true, is a false entry.*

If the false entry is calculated to deceive, the making of it in the books of the bank, with intent to deceive, is all that is necessary to bring the act within the meaning of the statute. If the words or figures so written falsify the fact or transaction intended to be authenticated the act is necessarily within the prohibition of the statute.

United States v. *Britton*, 107 U. S., 655.
United States v. *Harper*, 33 F. R., 480.
United States v. *Crecilius*, 34 F. R., 30.
United States v. *Allen*, 10 Biss., 90.
Coffin v. *United States*, 156 U. S., 432.
United States v. *Allen*, 47 F. R., 696.

XIII.

The law presumes that every man intends the legitimate consequences of his own acts. Wrongful acts knowingly or intentionally committed can neither be justified nor excused on the ground of innocent intent. The color of the act determines the complexion of the intent. The intent to injure or defraud is presumed when the unlawful act which results in loss or injury is proved to have been knowingly committed, etc.

The principle embodied in this instruction has long received the recognition and approval of courts and has been applied both in civil and criminal cases.

In *Clarion Bank* v. *Jones* (21 Wall., 337) an instruction was given to the jury which, as in this case, became the subject of an assignment of error. It is in substance the one given here. Mr. Justice Clifford, speaking for this court said, in approving the instruction granted:

> Persons of sound mind and discretion must, in general, be understood to intend, in the ordinary transactions of life, that which is the necessary and unavoidable consequences of their acts, as they are supposed to know what the consequences of their acts will be in such transactions.

In Clark's Criminal Law, page 46, the question is intelligently considered and many cases cited in illustration of the views presented.

XIV.

A reasonable doubt, as employed in criminal law, is an honest, substantial misgiving, generated by the insufficiency

of the evidence; it is not a doubt suggested by the ingenuity of the counsel or the jury unwarranted by the testimony, nor one born of a merciful inclination to permit the defendant to escape, nor one prompted by sympathy for the defendant, or those connected with him. It is a doubt as to the sufficiency of the evidence only.

This instruction presents a definition of "reasonable doubt" which appears to be not only in substance, but in form of expression, identical with instructions often approved by this court.

In *Lilienthal's Tobacco* v. *The United States* (97 U. S., 265 *et seq.*) the subject is generally considered, while in *Hopt* v. *Utah* (120 U. S., 439 *et seq.*) the language is approved; and in *Coffin* v. *United States* (156 U. S., 453) the definition given by the lower court, which is in form much like the one in hand, was approved.

Because the court refused to give the following instructions asked for by the defendant:

XV.

Every man is presumed to be innocent until he is proved guilty; and this legal presumption of innocence is to be regarded by the jury in this case as matter of evidence to the benefit of which the party is entitled. This presumption is to be treated by you as evidence, giving rise to resulting proof to the full extent of its legal efficacy.

This instruction was doubtless refused by the court because it is substantially covered by the charge of the court (p. 27) in clearer and more intelligible language in the eleventh assignment of error, heretofore considered.

XVI.

The making of a false entry is a concrete offense, which is not committed where the transaction entered actually took place, and is entered exactly as it occurred.

This proposition may be correct, as stated, but was altogether irrelevant to any state of facts which the evidence in this case tended to establish.

It is also covered by the charge of the court in granting an instruction asked for by the district attorney (p. 27).

XVII.

The truthful entry of a transaction charged as fraudulent does not constitute a false entry within the meaning of the statute.

This, too, is fully covered by the instruction given to the jury on page 27.

XVIII.

If the jury shall find from the evidence that on the 15th day of April, 1895, E. W. Agnew, upon receipt of the check of the Merchants' National Bank of Savannah for $3,400, used that check and the proceeds of it for the payment of a debt of the First National Bank of Ocala, then they must find upon that count in the indictment that he did not fraudulently embezzle or misapply the check or proceeds of it.

The first count of the indictment charges that Agnew, knowing that his personal account with the bank was largely overdrawn and that he was largely indebted to the bank, caused this check for $3,400, which was the

property of the bank, to be entered to his personal credit upon the books of the bank and thereby made subject to his personal check.

His offense consisted in that wrongful act and could not be condoned by any subsequent rightful application which he may have made of that amount of money.

See on this subject the testimony of McDonald, the bank examiner (pp. 119–120); and Mr. Agnew's explanation of the matter (pp. 141–142, 146), from which it is manifest that there was no evidence tending to prove that Agnew applied this "check and the proceeds of it for the payment of a debt of the First National Bank of Ocala," as the instruction assumes.

XIX.

That the written guaranty introduced and filed in evidence, signed by E. W. Agnew, and conditioned for the payment of the interest and principal of the bonds of the Globe Phosphate Mining Company, was, upon its face, a good, legal, and sufficient guaranty; and that if the jury shall find from the evidence that at the time of the delivery by E. W. Agnew to the cashier of the First National Bank of Ocala of the bonds of the Globe Phosphate Mining Company in controversy he also delivered the guaranty which has been introduced in evidence; and they shall further find from the evidence that at the time said guaranty was signed and delivered that Agnew, the defendant, was solvent and thoroughly able to respond to the obligation, and that he signed and delivered the guaranty with the knowledge of his solvency and with intent to pay the same

when demand was made upon him for payment, then the jury may find from the evidence that the defendant did not invest or misapply the money arising from the sale of the said bonds with intent to defraud the association or anyone else.

Mr. Agnew, the defendant, has appeared and testified in his own behalf. He was examined by his counsel as to the purchase of the bonds of the Globe Phosphate Mining Company and testified that he bought them for himself and not for the bank. He knew, if anyone did, all about the guaranty which he gave at the time he delivered these bonds to the cashier of the bank, what his intentions were as to the payment of such guaranty and what his ability was to fulfill such intention; and yet in the course of his testimony in his own behalf it does not appear that this subject was referred to by him. However correct an instruction offered may be in its statement of the propositions of law embodied in it, it is never proper to grant it in any case unless evidence has been offered before the jury tending to establish the hypothesis on which the instruction rests.

Mr. McIntyre, who was cashier of this bank, testified (p. 96) that Agnew deposited ten bonds of the Globe Phosphate Company of $1,000 each, and said to him, the cashier, "Here is $10,000 in bonds; place these to my credit. I will guarantee the bonds to be all right; give you a written guaranty that the principal and interest will be paid." And, further, on page 100, that this was not authorized or consented to by the board of directors of the bank. The item of $5,000 for the five

bonds of $1,000 each of the Globe Phosphate Company is explained on pages 104–107.

The written guaranty referred to as given by Mr. Agnew appears to have been offered in evidence and read to the jury during the examination of McIntyre (bottom p. 129). But it does not appear to be anywhere printed in this record, and its contents, therefore, can not be made known to the court here. It is impossible, then, for this court, in reviewing the action of the lower court refusing to grant the instruction asked for, to know whether the guaranty "was upon its face a good, legal, and sufficient guaranty," and consequently it can not say that the lower court was right or wrong in refusing to grant such instruction, because the lower court may have been of the opinion that the written guaranty was not such an instrument as was described in the instruction. The guaranty appears to have been deposited with McIntyre, cashier, and placed in the bank safe with the bonds, and afterwards sent to Mr. H. B. Masters, New York (p. 133).

HOLMES CONRAD,
Solicitor-General.